

IN THE DISTRICT OF THE UNITED STATES OF AMERICA
FOR THE SOUTHERN DISTRICT OF ILLINOIS

ADELAIDA ANDERSON and JEFF ANDERSON,

Plaintiffs,

v.

Case No. 19-cv-800-SPM

RAYMOND CORPORATION,

Defendant.

Transcript of Jury Trial - Volume IV
November 4, 2021

Proceedings held in person before
the Honorable **STEPHEN P. McGLYNN**,
United States District Judge Presiding

East Saint Louis, Illinois

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TRANSCRIPT OF PROCEEDINGS

(Proceedings commenced at 9:01 a.m.)

THE COURTROOM DEPUTY: United States District Court for the Southern District of Illinois is now in session, the Honorable Stephen McGlynn presiding. You may be seated.

Calls Case Number 19-cv-800, Adelaide Anderson, et al., v. Raymond Corporation. Parties, please state your name for the record.

MR. WARSHAUER: Michael Warshauer for the plaintiff. Good morning.

MR. BRENNAN: Ryan Brennan for Plaintiff.

MR. MCCOY: Frank McCoy for Plaintiff.

MR. ABBOTT: Jasper Abbott for the plaintiff.

MR. LoCOCO: Frank LoCoco for Raymond.

MR. MURPHY: Patrick Murphy for Raymond.

MS. HEITKAMP: Margaret Heitkamp for Raymond.

THE COURT: All right. We've not brought the jury in yet. My understanding is the parties want to take up something on the record before we bring the jury in this morning; is that correct?

MR. LoCOCO: Yes, Your Honor. One issue with the next witness, and then one issue with Mr. Anderson's video deposition. They decided to play his video dep instead of putting him on the stand.

THE COURT: All right.

1 MR. LoCOCO: Which under Rule 32, you're
2 permitted to approve because of infirmity, et cetera, so we're
3 not even going to argue about that.

4 The prosthetist was identified as a potential
5 trial witness. He was identified to talk about his treatment,
6 evaluation, and rehabilitation of Mrs. Anderson. There were
7 no -- there was no report from him. He's a treater. This
8 morning -- I appreciate Mr. Warshauer showing this to me. I'm
9 told that he intends to talk about a number of different
10 prosthetic limbs that are available to an amputee such as
11 Mrs. Anderson. None of those were ever identified as exhibits.
12 And I also understand that he intends to ask Mr. -- I forget his
13 name, I apologize.

14 MR. WARSHAUER: King.

15 MR. LoCOCO: About the cost for those various
16 limbs. Several of those limbs were not included or discussed or
17 priced out in the life care plan. If they had been, that might
18 have changed our view of whether to get a testifying life care
19 planner. So under Rule 26 and -- mostly under Rule 26 and
20 under -- and given the evidence that we've -- that's been
21 elicited so far, this witness should not be allowed to talk
22 about any of the limbs that weren't included in the life care
23 plan, and also for which there's no evidence that Mrs. Anderson
24 would ever use those limbs in the future. We'd be substantially
25 prejudiced. I don't know the prices of any of those, and

1 there's no way to cross-examine those prices today.

2 THE COURT: Your response?

3 MR. WARSHAUER: Yes, sir. I think our
4 identification of Mr. King as a testifying witness expert under
5 Rule 26 will be broad enough to cover everything we're going to
6 do. With respect to whether or not the life care plan includes
7 a particular cost, I specifically pointed out to the jury what
8 it does include. It does include a present. And then I asked,
9 "Well, what if in the future she wanted bigger, better, that was
10 more expensive?" And the life care planner said, "Well, that
11 wouldn't be included." "That wouldn't be enough money to cover
12 it?" "No."

13 Then Ms. Klosterman said, "And people sometimes
14 do get better and they do decide that they want to really
15 improve their lives." And she talked about that in some degree
16 of detail, particularly on cross.

17 So Mr. King has brought with him a series of
18 prosthetics. We plan to do a couple of things with Mr. King.
19 One is we're going to talk specifically about Lidy Anderson's
20 care, what prosthetics she's had, the difficulty she's had with
21 fitting those prosthetics, pain, et cetera. We're going to talk
22 about the options available to her, and in the process of doing
23 so, it's relevant to talk about what they cost. They're not
24 going to be like \$50,000.28.

25 It will be what she has now, "Is this more

1 expensive? About what -- how much does this run?" "Well, if
2 she gets to a point where she thinks this is in her best
3 interest, this is a \$50,000 limb, and if we put a suction device
4 on it, it goes to about 70." That's something that has -- that
5 is relevant. The jury can consider it. And we specifically
6 talked with Ms. Klosterman about it. The number we presented
7 didn't include it, but the option that it might be something the
8 jury wants to consider in the future was absolutely alluded to.

9 THE COURT: It's certainly relevant. The
10 question is, if he hasn't been -- it's my understanding that he
11 was identified as a potential fact witness.

12 MR. WARSHAUER: Potential expert witness. We did
13 do a Rule 26 disclosure.

14 THE COURT: You did.

15 MR. WARSHAUER: But keep in mind, that's not the
16 same level of detail one would expect from a retained expert.

17 MR. LoCOCO: He's a treater, Your Honor.

18 THE COURT: All right. He's identified as a
19 treater. And you have all his treating notes?

20 MR. LoCOCO: We have his treating notes, yes,
21 sir.

22 THE COURT: But is this going to be go above and
23 beyond what's in his notes?

24 MR. WARSHAUER: I think it goes consistent with
25 our identification, which Jasper's looking for it right now,

1 what the disclosure was. But I recall the way we typically do
2 it. He would be talking about prosthetics, future needs, future
3 options. I kind of make that a broad sentence. It's not really
4 very prejudicial at all anyway. The jury wants to know what the
5 options are. That clearly is there. Whether -- even if we were
6 excluded to talk about the cost, I should still be allowed to
7 say, "Is this more expensive than what she has?" because we did
8 leave that open, and the options are available to her.

9 That is part of the treatment that he is
10 providing to her and in the future and continuously talks to her
11 about. Like swim legs, that's an a option. She doesn't
12 presently have one but he would like her to have one. That's
13 part of his treatment. She doesn't have a running leg. She'll
14 testify she used to be on the treadmill all the time. It would
15 be something she wants. It's not part of the treatment plan.
16 It's not presently something she owns.

17 THE COURT: What document is your Rule 26
18 disclosure in?

19 MR. WARSHAUER: Excuse me?

20 THE COURT: Because I'm going to have to go back
21 and see --

22 MR. LoCOCO: Well, Your Honor, I'll read it to
23 you. We found it. It's right here. This is what it says. I
24 should put my glasses on. "Bryan King is a prosthetist who
25 provided prosthetic services to the plaintiff after her injury.

1 Mr. King will be expected to testify based upon his observations
2 and professional evaluation of the plaintiff and the facts
3 contained in its medical records, which have been produced to
4 the defendant and are incorporated by reference and made a part
5 of this disclosure. He's expected to testify as to the nature
6 and extent of Plaintiff's injuries, her prognosis, and the
7 limitations faced by Plaintiff after incurring the injuries,
8 during her recovery, and into the future. He is expected to
9 discuss prosthetics available to the plaintiff as well as the
10 cost and durability of these devices and associated supplies."

11 Your Honor, I assume that last sentence catch-all
12 is what Mr. Warshauer is relying on, but the related issue is
13 that for a medical opinion to come in, the standard is that the
14 testifier, which is why you require Rule 26 reports, has to be
15 able to state that it's reasonably certain that she will need
16 this device, this surgery, this therapy, if not now, into the
17 future. And I don't think -- we haven't been given any
18 disclosure that says she is reasonably certain to need or to use
19 any of these high-tech limbs that Mr. King has brought with him
20 today, which we're seeing for the first time.

21 MR. WARSHAUER: I think that disclosure was put
22 in my notes. We're going to be talking about costs and future
23 needs.

24 THE COURT: I don't know what's in the medical
25 records.

1 MR. WARSHAUER: It's --

2 THE COURT: Wait. I don't know what's in the
3 medical records. Generally, when you're disclosing a treater
4 and you -- if you want to go above and beyond what's in their
5 records and notes, you really got to say "And we also intend to
6 have this." Now he does say that he's expected to testify about
7 what prosthetics may be available and their respective costs, so
8 you're put on notice. How are you prejudiced because you
9 decided not to take the deposition or go further? How are you
10 prejudiced?

11 MR. LoCOCO: Yeah. So I'm going to do it by
12 metaphor. Very first trial I observed as a lawyer back in 1986,
13 there was a treater. It was a quadriplegic case, forklift
14 actually made by Yale. Quadriplegic -- tetra-quadriplegic. He
15 still had his hands. And in the disclosure -- we didn't have a
16 report requirement then. Nobody did. In the disclosure, it
17 said he's going to talk about his medical records, et cetera,
18 et cetera, and he's going to talk about injury causation.
19 Right? Which has a real technical meaning now.

20 The guy gets on the stand and goes through a real
21 injury causation analysis, not treatment. And they did the same
22 thing, said "You're on notice." We tried to hire somebody in
23 the middle of trial and the Court wouldn't let us do it because
24 of the significant prejudice of that. Well, shame on us. And
25 that had happened to a lot of parties.

1 So the rules were changed so that if you're going
2 beyond the medical records, you have to write a report, to give
3 reasonable notice. I don't think that throw-away line at the
4 end of the disclosure is reasonable notice that they intend to
5 come in here and say, "Well, she could have gotten a \$70,000 --
6 she could get a \$70,000 limb in the future that has a motor in
7 it" versus "I don't know what the limb costs that she's wearing
8 today." I assume we'll hear that. We should hear that. I
9 mean, and that's been taken into account in the life care plan.
10 So that's prejudice.

11 The additional prejudice is, if we had had the
12 costing for those, we could have compared them, gotten our own
13 prosthetist, and possibly named him or her as an additional
14 retained testifying witness. The way that was written, you
15 could look at any of the other disclosures about the docks,
16 they're all going to say the same -- same type of thing, that --
17 lawyers do catch-alls, so.

18 THE COURT: I understand.

19 MR. WARSHAUER: Well --

20 THE COURT: The key, you're saying, is that there
21 was no report --

22 MR. LoCOCO: Correct.

23 THE COURT: -- generated because it is above and
24 beyond what is part of his ongoing treatment or his historic
25 treatment. Anything else?

1 MR. WARSHAUER: "Expect to discuss prosthetics
2 available to the plaintiff." "Available to the plaintiff" is
3 present and future tense word, as well as the cost and
4 durability of these items. It's not a throw-away line. I don't
5 use availability of prosthetics with any other treater.

6 Additionally, Your Honor, it's a way big
7 difference between some doctor who's going into sophisticated
8 medical causation and a prosthetist. And I don't in any way
9 mean to demean that profession, but we're not talking about
10 connecting a drug to a disease here. We're talking about the
11 mechanics of what is available to her as a device, which we said
12 he's going to talk about. These are available to her right now.
13 Forget about the future. They are available to her right now if
14 she's able to use them. And they do have a cost. Both of those
15 were disclosed.

16 They weren't going to hire another life care
17 planner and they weren't going to hire another prosthetist.
18 They've never done that. Nobody ever hires two prosthetists.
19 It's silly. I don't --

20 THE COURT: They could have taken his deposition.

21 MR. LoCOCO: Mm-hmm.

22 THE COURT: If they thought, "Oh, this guy's
23 going to come in and he's going to say, 'Oh, by the way, there's
24 another 5-, \$600,000 worth of prosthetics that are in the
25 queue,'" that all she has to do is say "I want them" and then

1 there's another \$500,000 in damages. Certainly relevant.

2 But the issue is, we have rules that make sure
3 that our trials proceed in a fair way. And one of the ways we
4 the Courts have tried to make sure they proceed in a fair way is
5 to avoid these last-second -- avoid surprises or allowing
6 witnesses to talk beyond what they were initially identified as
7 the subject matter of their discussions. So I'm going to -- I'm
8 going to do a little research on this, look at the disclosures,
9 pull up -- what document? You guys read it to me. What
10 pleading?

11 MR. LoCOCO: It wasn't filed, Your Honor.

12 THE COURT: Pardon me?

13 MR. LoCOCO: It wasn't filed. We could e-mail it
14 to you.

15 THE COURT: All right. I'll be back in ten
16 minutes.

17 MR. LoCOCO: Thank you, Your Honor.

18 (Recess from 9:15 a.m. to 9:25 a.m.)

19 THE COURT: Please be seated. All right. We're
20 back on the record in Anderson v. Raymond.

21 We have the motion with respect to Bryan King.
22 Rule 26 requires disclosures. Under (1)(A)(iii), it's required
23 that there be a computation of each category of damages claimed
24 by the disclosing party who must also make available for
25 inspection and copying under Rule 34 the documents or other

1 evidentiary material, unless otherwise privileged or protected
2 from disclosure on which each computation is based, including
3 materials bearing on the nature and extent of injuries suffered.

4 Under Rule 26(2)(B) -- I'm sorry, (2)(C)(ii), for
5 witnesses to not provide a written report: Unless otherwise
6 stipulated or by order of the Court, if a witness is not
7 required to provide a written report, the disclosure must state,
8 quote, a summary of the facts and opinions to which the witness
9 is expected to testify.

10 The disclosure as written says an important part.
11 He's expected to testify as to the nature and extent of
12 Plaintiff's injuries, her prognosis and limitations faced by
13 Plaintiff after incurring the injuries during her recovery in
14 the future. It starts off by saying, "Mr. King will be expected
15 to testify based upon his observations and professional
16 observations --" I'm sorry. Professional -- let me start that
17 over again. "Mr. King will be expected to testify based upon
18 his observation and professional evaluation of Plaintiff and the
19 facts contained in his medical records, which have been produced
20 to the defendant and are incorporated by reference." The facts
21 contained in the medical records.

22 It also says, "He is expected to discuss
23 prosthetics available to the plaintiff as well as the costs and
24 durability devices and associated supplies." However, it does
25 not set out in the disclosure the facts of what those costs may

1 be or how long they are expected to last. It just says that he
2 may be giving those opinions.

3 It further says in the disclosure, "It is
4 expected that the witness will refer to his medical records and
5 in particular his patient notes. It's expected that the
6 photographs of Plaintiff will be used with this witness. It is
7 expected that prosthetics of the kind Plaintiff has and should
8 have will be used. It is possible but less likely that medical
9 bills will also be used with this witness." And it says there's
10 a high probability that this expert will be called as a witness.

11 I don't know what's in his medical records. But
12 it does not sound like under Rule 26(A)(iii) that the plaintiff
13 has produced a computation of each category of damages including
14 materials that support the computation as to these prosthetic
15 devices that Mr. King may be referencing. I don't think that --
16 well, there's a summary of opinions. There's not a summary of
17 the facts. It doesn't say what prosthetic devices he
18 anticipates she will need. It does not say what the prospective
19 costs are. And so I don't think that you're going to be able to
20 get into what the costs are. And I think that was the specific
21 objection of the defendant.

22 If in the medical records it supports either that
23 they discussed or he had contemplated different prosthetic
24 devices that he may show, then he certainly may show those and
25 talk to them about it. But I'm not going to allow him to come

1 in and talk about the costs.

2 MR. LoCOCO: Thank you, Your Honor. I just want
3 to add one thing for the record, and since Mr. King is here,
4 he'll hear this. I think everyone agrees, I think he'll say
5 this, that he's not a physician, so he can't prescribe a
6 prosthetic limb anyway. He can only fill the order. And
7 there's no doctor opinion saying she would need any of these
8 other ones in the future. So I just --

9 THE COURT: Well, certainly his knowledge of
10 prosthetics is going to be greater than the average juror's, and
11 so I'm going to give him a lot of leeway --

12 MR. LoCOCO: Sure.

13 THE COURT: -- in testifying what's within his
14 scope. Obviously the doctors can talk to --

15 MR. WARSHAUER: So --

16 THE COURT: -- professionals with his credentials
17 and say, "What do you think about this? What do you think about
18 that? Or what do you have that could accommodate her desire to
19 swim or to run a marathon?"

20 MR. WARSHAUER: So, Judge, what I intend to do,
21 based on the Court's ruling, based on the "have" and "should
22 have" language of the disclosure, we will talk about a range of
23 options, everything from what she has to less expensive to more
24 expensive. I will not ask the cost.

25 THE COURT: You're not even going to say,

1 "Here's -- this is the Cadillac model. It costs a lot more than
2 what we -- what the other person said."

3 MR. WARSHAUER: I can't even say "That's more
4 expensive"?

5 THE COURT: You can't say it's more expensive.
6 You can just say, "Here's other prosthetics that are available,"
7 if that's contemplated in his records. All right? All right.

8 MR. LoCOCO: The other issue, Your Honor, just
9 from a time-saving perspective, is it deals with the video of
10 Mr. Anderson's trial testimony that was taken in February. As
11 part of that video, the plaintiff showed a cell phone camera
12 video of a moment -- I don't even know when, because I don't
13 recall what the foundation was -- when Mrs. Anderson is shown on
14 her bed in night clothes, having a spasm involving her amputated
15 leg, writhing in pain, wailing. It's something awful to listen
16 to, a close-up on the limb showing the muscle spasm, and we've
17 objected to this.

18 If you read the first part of the deposition, I
19 spent two pages objecting to it, going into the trial testimony,
20 and we continued to object to it. I don't think it's actually
21 relevant, given the other testimony we're going to have. But
22 putting that aside, it's certainly -- its prejudicial effect far
23 outweighs any probative value it has.

24 THE COURT: And now you're bringing it to my
25 attention? These are the sort of things, as I said, if there's

1 evidence that's going to be coming in and there's a problem, I
2 want to know ahead of time. I don't want to be asked to shoot
3 from the hip.

4 MR. LoCOCO: Well, I understand that, Your Honor.
5 Until last night -- until this morning, we were being told
6 "We're going to try and put him on the stand and not use the
7 video."

8 MR. WARSHAUER: We were always going to use the
9 video of Ms. Anderson.

10 MR. LoCOCO: And I've always objected to it, and
11 I think we've noted -- I don't know if that -- and that
12 particular video, we objected to in our --

13 THE COURT: All right. Let me ask you this.
14 Who's going to be first?

15 MR. WARSHAUER: Bryan King's going to be first.

16 THE COURT: All right. So let's -- we'll do
17 Mr. King. We'll break. I'll view the -- somebody can then get
18 queued up the part of the deposition and I can hear your
19 objections.

20 MR. LoCOCO: It's also separately listed as
21 Exhibit 61. I guess that's your old number. I don't know what
22 it is right now.

23 MR. McCOY: I think that's the new number.

24 MR. LoCOCO: New number. It's 61, to which we
25 objected under 401 and 403.

1 MR. McCOY: It's about a 20-second video. I
2 don't know the exact time, Your Honor, but it's a very short
3 video. 38 seconds.

4 THE COURT: All right. The other thing I think
5 we have to put on is under Rule 32, use of depositions in court
6 proceedings, under Rule 4 -- or 32(4)(C), a party may use for
7 any purpose the deposition of a witness, whether or not the
8 witness -- I'm sorry -- whether or not a party, if the Court
9 finds that the witness cannot attend or testify because of age,
10 illness, infirmity, or imprisonment.

11 Now Mr. Anderson has attended every day of trial.
12 There are -- there were times during the trial proceedings where
13 he excused himself for reasons the Court did not inquire about.
14 But on what basis am I to find that, due to illness or
15 infirmity, he cannot testify, since he is present?

16 MR. WARSHAUER: He has been present, Judge. As
17 the Court is aware, he has cancer. The cancer is requiring him
18 to take drugs. The cancer is also just wearing him out. He
19 will not be able to sit and offer intelligent responsive answers
20 very long as a witness. He does only drive part of the way both
21 directions. He drives to get out of town and then they let
22 their 15-year-old do the long driving, because his concentration
23 does not allow him to even drive back and forth from Effingham.

24 He has throughout the trial had to excuse himself
25 to be ill, to be sick. So he is presently quite ill. And it

1 appears to be to my observations, the stress of the trial seems
2 to have -- or being here, whatever, seems to have made him iller
3 each day. It certainly gets worse as the day goes on. I don't
4 think that we -- and I have met with him and talked to him, and
5 sometimes I am not getting answers that I believe are responsive
6 to simple questions. They're rambling. They're nonresponsive.
7 And I don't think that he would be able to represent himself
8 appropriately or fairly as a witness before the jury.

9 THE COURT: All right. Mr. LoCoco, do you have
10 any objections?

11 MR. LoCOCO: I'm sorry?

12 THE COURT: Do you have any objection to the use
13 of the deposition, other than what you've raised as parts within
14 the -- or objections that you raised during the course of the
15 deposition that you're not waiving?

16 MR. LoCOCO: We do not. I mean, we can sit here
17 and ask you to require a doctor's note. We're just not going to
18 do that under the circumstances.

19 THE COURT: All right. Then under the
20 circumstances, what I will do is I will announce before his
21 deposition is played, that the jury has been introduced to
22 Mr. Anderson, and you have seen him here during most of the
23 trial. But Mr. Anderson is ill, and the rules allow me to
24 permit deposition testimony be presented of a witness, even if
25 the witness is available, if I find that due to illness or

1 infirmity, it would be appropriate to allow the party to play
2 his deposition as opposed to calling him as a witness. Anybody
3 have any objection to that type of explanation?

4 MR. WARSHAUER: I think that's appropriate, Your
5 Honor.

6 MR. LoCOCO: We don't, Your Honor. I'll just
7 add, less is more. As you know from our pretrial filings, we're
8 sensitive to how much of this is actually relevant. So --

9 THE COURT: I understand.

10 MR. LoCOCO: But obviously the jury should get
11 some explanation.

12 THE COURT: The jury should get some explanation.

13 MR. LoCOCO: Yep.

14 THE COURT: All right. So why don't we -- let's
15 let the jury know we're going to bring them in at 9:45. And
16 based upon my rulings thus far, you can think about how you want
17 to handle your next witness. We're in recess until 9:45.

18 (Recess from 9:40 a.m. to 9:46 a.m.)

19 (Jury enters at 9:46 a.m.)

20 THE COURT: Please be seated.

21 Ladies and gentlemen, if I'd have known we
22 weren't going to be able to get started until 9:45, I'd have let
23 you sleep in this morning, so I apologize. But as is typical,
24 there's a lot that goes into these cases, and there's a lot that
25 we have to do outside the presence of the jury. Things come up

1 and it's just -- it's just the nature of trying to make sure
2 that I try to give a fair trial and that we present it to you in
3 the fairest way and in the most appropriate way.

4 So with that, call your next witness.

5 MR. WARSHAUER: Good morning. The plaintiff
6 calls Mr. Bryan King.

7 (Witness sworn.)

8 THE COURTROOM DEPUTY: Please state your full
9 name and spell your last name for the Court.

10 THE WITNESS: Bryan David King, K-i-n-g.

11 THE COURTROOM DEPUTY: Thank you.

12 DIRECT EXAMINATION

13 BY MR. WARSHAUER:

14 Q Good morning, Mr. King.

15 A Good morning.

16 Q What is your professional address?

17 A 2600 South Raney Avenue in Effingham, Indiana -- or Illinois,
18 I'm sorry. 62401.

19 Q What do you do?

20 A I'm an orthotist and prosthetist, so I provide prosthetic
21 care and orthotic care to patients who are referred to us.

22 Q What is that?

23 A Prosthetics is designing and fitting an artificial limb for
24 someone who's lost a limb, either through a disease process
25 or trauma. So we get a referral from a physician or a

1 physical therapist, and then we evaluate the patient and
2 formulate recommendations that we think are going to best
3 meet their needs, and then we get medical documentation
4 support from the physician to move forward with our plan.

5 Q What kind of training and education and experience do you
6 have that allows you to work in the field of prosthetics?

7 A I have an undergraduate degree in health science from Purdue
8 University. From there, I went to Northwestern University,
9 where I had two long-term certificate degrees in orthotics
10 and prosthetics.

11 Q There's a couple ways we can talk this morning. One is, I
12 want to get a sense of how prosthetics work, and then I want
13 to focus on Lidy. So let's start with the idea of how
14 prosthetics work, what the various prosthetics that are out
15 there for lower limbs, and then we'll talk specifically about
16 how you've dealt with Lidy's injuries. I think that makes
17 the most sense. Is that okay with you?

18 A Sure.

19 Q So when we're talking -- today we're going to be talking and
20 focusing on a below-the-knee amputation. So when we start
21 there, when you have that in general come to you, what are
22 you thinking, and where are you going to go with that? How
23 do you formulate a treatment plan, if you will? How do you
24 formulate what prosthetics you're going to offer to them, and
25 how do these prosthetics work?

1 A Yeah. So initially, it's essentially an interview with the
2 patient, trying to determine what their pre-amputation
3 lifestyle was, what kinds of activities were they typically
4 engaging in. Lidy is not our typical patient in that our
5 typical prosthetics patient is an individual who has diabetes
6 or advanced vascular disease and typically a whole host of
7 health issues related to that. So when we have someone come
8 in as a traumatic amputee, the dynamics are a little
9 different in that we know having lost a leg traumatically is
10 typically going to be a different psychological impact than
11 someone who's lost a diseased limb, where losing this limb is
12 liberating to some extent. So it's a lot different, so we're
13 sensitive to that.

14 Obviously we do a physical assessment. We
15 look at the residual limb and assess the length and the
16 health of the soft tissue, because the prosthesis -- the part
17 that I make is called the socket. That's the top of the
18 prosthesis that her residual limb -- and I refer to it as a
19 residual limb instead of a stump. The residual limb fits
20 into that socket, and that socket is custom-made in a way
21 that it distributes pressure evenly around soft tissue in the
22 residual limb so the patient can bear all of his or her
23 weight comfortably in walking on that.

24 So I have to look -- I have to do a physical
25 assessment and determine what kind of -- what kind of socket

1 are we going to make. There are some that sort of target
2 specific regions of the residual limb and soft tissues.

3 There are some -- the more frequent way we do it now is what
4 we call total surface bearing, where we essentially make a
5 mold of the residual limb and we're shooting for even
6 pressure distribution over the entire limb. Historically, we
7 would create reliefs or voids over bony areas that might be
8 sensitive to pressure. The total surface bearing starts
9 where we're loading every square inch of that residual limb
10 uniformly as much as we can.

11 Q What if they gain weight or lose weight over their life? Do
12 you have to start over?

13 A Sometimes. And that's a reality for any amputee is volume
14 fluctuation. That's a normal part of it. For a new amputee,
15 we know -- I always emphasize to those folks, the first
16 prosthesis that you get is going to last the shortest length
17 of time of any that you'll have, because the residual limb is
18 going to change dramatically in the first year as they start
19 walking on it. You're going to have soft tissue and muscle
20 that's going to naturally atrophy or shrink down. So the
21 amputee can manage that up to an extent by adding socks
22 over -- typically there will be a cushion liner on the
23 residual limb first, and then they, as they lose volume, they
24 will add socks over that liner to keep the socket tight and
25 so that it's comfortable so bear weight in it.

1 But there's really a limit to how much sock it
2 can pack on over the liner or the residual limb before we
3 say, this limb has changed enough in size or shape that we
4 need to remake the socket. So it's not uncommon in the first
5 year to have two, sometimes three socket replacements. And
6 when we do a socket replacement, we just replace the socket,
7 and then the existing prosthetic foot is transferred onto the
8 socket.

9 Q Well, I interrupted you in the socket, because I was curious
10 what happened if they lose or gain weight. So you are sort
11 of telling us that you're starting with the building of the
12 socket, and then I guess you've got to figure out what goes
13 below the socket, the choice of how that socket connects to
14 the residual limb?

15 A Yeah.

16 Q You have some options there?

17 A Right.

18 Q So let's talk about -- do you want to finish up on the
19 socket, the choice of how it hooks on, if you will?

20 A Yeah. So we refer to that as suspension or how the
21 prosthesis is suspended or attached to the residual limb. Do
22 you want to know all the options, or?

23 Q Yeah. I'd like to know -- well, we can focus mostly on Lidy.
24 What were the options available to her? What were the
25 benefits and detriments to each?

1 A Yeah. Well, when she first came to me, she already had a
2 prosthesis that had a locking pin suspension system, where
3 she has a silicone or mineral oil gel liner that she rolls
4 onto her residual limb, and then there's a metal pin that
5 attaches to that liner. She inserts her residual limb into
6 the socket and that pin goes into a locking mechanism, so
7 it's mechanically locked on.

8 Q All right. So let me stop you there. You said "rolled on."
9 So she puts her leg on and then --

10 A I have one, if you --

11 Q That's even better.

12 A Okay. Yeah. So is it okay to show the mechanism?

13 Q Sure.

14 A Okay. So this is a liner that we would typically use for a
15 below-knee amputee. And what she has to do is reflect this
16 thing inside out completely, and then roll it onto the
17 residual limb like this. And once that's on the residual
18 limb, then this metal pin will go into a locking mechanism in
19 the bottom of the socket and it locks on like that.

20 Q Okay.

21 A Okay.

22 Q And that's what she had initially?

23 A That's what she had initially. I took her out of that
24 because she was having problems. She was having comfort
25 issues. And the reality is, when we fit someone with this

1 type of suspension system, we're really attaching the
2 prosthesis just on the end of this liner. So we know there's
3 going to be some movement between the residual limb and the
4 socket.

5 Q Does that create safety or balance issues?

6 A It can -- it can create balance issues. But the bigger issue
7 is when you have movement within that socket, rubbing issues,
8 where the limb is prone to get sores because it's just moving
9 too much. So we want as little movement between her residual
10 limb and the socket as possible. So the other thing is, the
11 better we suspend this prosthesis, the better we attach it to
12 the residual limb, the lighter it's going to feel. Every
13 amputee will tell you, when they first start out wearing a
14 prosthesis, this thing weighs a ton. It's because it's
15 not -- it's not part of the body. It's something that's
16 attached and suspended off of you, right? But we know the
17 better -- the more secure attachment we get, the lighter it's
18 going to feel. So the perception of weight is really
19 minimized when we have really good suspension.

20 So the first thing I did for Lidy was to put
21 her in a suction suspension. So --

22 Q How's that work?

23 A With suction suspension, the pin's gone. She still has a
24 cushion liner, but it's -- it's no longer a means of
25 suspension, but it just serves as a cushion interface between

1 her and this hard socket. So the same routine for her,
2 rolling that onto the residual limb, but rather than having
3 to lock into some kind of mechanism in the bottom of the
4 socket, she inserts her leg into the socket, and then there's
5 an outer sleeve on here that rolls up onto her thigh and
6 makes skin contact to create a seal. Then there's a one-way
7 air expulsion valve down in the bottom of the socket that
8 will evacuate air and not let anything come back in.

9 Q Do you have one of those you can show us?

10 A I do. So that was kind of an easy thing to observe and think
11 that this might help her, this might help her comfort, her
12 stability, her confidence. So this is just one example where
13 there's a little air expulsion valve on the back of the
14 socket. So after she rolls the liner onto the residual limb,
15 inserts her leg into the socket, then she has to roll this up
16 onto her thigh and it has to make skin contact to create an
17 air seal. And then if she walks, all the air's evacuated.
18 So now this leg is held on over the entire surface of the
19 residual limb and not sort of dangling off of a pin.

20 Q And that's a better system?

21 A It's a better system.

22 Q Okay.

23 A It's more secure.

24 Q So we've talked about socket, talked about the suspension
25 system. Now what is the next thing we've got to consider

1 when we're --

2 A The next big thing is, what kind of foot are we going to put
3 on this patient? There's a lot of technological development
4 in prosthetic feet and it moves fast. So when I got into
5 this field over 30 years ago, the feet available to us, there
6 were far less feet than we have now. So that's where we want
7 to know what was her lifestyle before she lost her leg. What
8 kinds of things do you want to get back to doing? And we
9 want to provide a foot that will best meet those needs.

10 So obviously, you know, if I see a 20-year-old
11 traumatic amputee who wants to return to playing softball or
12 volleyball and returning to work full-time versus an
13 85-year-old brittle diabetic whose goal is household
14 ambulation, there are radically different feet options for
15 those folks. And it's kind of everything between those ends.

16 Q I think over the next couple of hours today, we're going to
17 learn that Lidy was fairly active. We've already learned she
18 worked in manual labor as a forklift operator. I think we
19 will learn she enjoyed riding horses. She enjoyed running
20 treadmill. She enjoyed walking, shopping. She enjoyed
21 wearing high heels. She enjoyed swimming. Did she share
22 with you those kinds of things as part of her discussions
23 with you, that she was an active woman?

24 A Yeah. I don't recall outlining specifics, but yeah, just in
25 our casual conversations in the treatment room, it was clear

1 that she was active --

2 Q Okay. So what --

3 A -- prior to the amputation.

4 Q -- are the kinds of feet available to her, and what did she
5 eventually end up with?

6 A Well, again, I'm going to reference what she had when she
7 came to me. She had a foot that has a hydraulic ankle on it.
8 So unlike this foot, the ankle will bend up and down, and the
9 user can adjust the hydraulic resistance for whatever walking
10 activity she's going to be engaged in. That's nice, but for
11 her, it was heavy. So that was just a tradeoff that ended up
12 not being good.

13 So we put her in a -- just a standard carbon
14 fiber, what we call an energy storing or dynamic response
15 foot. So the way it works is, when she's walking, whatever
16 load she puts into the carbon fiber foot, it will deflect,
17 and as her weight progresses through the step cycle, it will
18 return that energy to her, so it's energy storing, and that's
19 something that's unique to carbon fiber. And that's why
20 carbon fiber is really the standard material now for
21 prosthetic feet.

22 So we just wanted to give her a foot that
23 would give her maximum energy return, maximum responsiveness,
24 and also one that is what we call multiaxial, so that if she
25 does go outdoors and walk in the yard or if she goes to an

1 outdoor sporting event where she's going to be walking on
2 uneven terrain, that foot will accommodate those varied
3 walking surfaces or inclines or slopes or terrain.

4 Q So let's talk about some other things that were available.
5 You told us what she -- you fitted her with, which she's
6 wearing.

7 A Yeah.

8 Q So perhaps we can use this to explain how this works.

9 MR. WARSHAUER: May I approach?

10 BY MR. WARSHAUER:

11 Q What are we seeing here on her actual prosthetic?

12 A So this is her actual prosthesis. And like I showed you
13 here, this is suction suspension. So she puts her residual
14 limb into the socket, rolls this suspension sleeve up onto
15 her thigh to create a seal, all the air gets pushed out, and
16 we've got a suction fit now. Very secure. It's not moving
17 on her residual limb. You can't see much of the foot unless
18 I take the shell off. Do you want to see it?

19 Q Well, I'm kind of interested in it.

20 A Sure. So --

21 Q What is this that you're pulling off?

22 A This is called a foot shell. This is not the foot itself.
23 And I'm not going to take that off the rest of the way
24 because I wouldn't get it back on.

25 Q Okay.

1 A Okay. But I can show you another that is similar. So
2 essentially she's got a carbon spring in there, so this is
3 the material that will deflect under load and then spring
4 back to help push her into the next step. I hope that...

5 Q Yeah. Thank you. So I'll return that to Lidy. Thank you.

6 A Yeah. So there's a little sock inside that foot shell called
7 a spectra sock. It's just a special material to keep the
8 rubber shell from squeaking on the carbon.

9 Q All right. So what were some other things that were
10 available, perhaps less sophisticated or even more
11 sophisticated? You've talked about the ones she came with
12 which had hydraulics. You've talked about the one with the
13 carbon fiber. Are there any that are electronically
14 controlled that were available?

15 A There are. And those are things that after we get her to a
16 certain level functionally, that would enter the discussion
17 of, you know, what sorts of technology might we make
18 available to you to take your life back to the next level.

19 Q And did you bring one of those that you can share with us?

20 A Yeah. So one of the -- sorry. One of the things that we did
21 discuss specifically with Lidy was her interest in getting
22 back to swimming. So it's really not feasible for her to
23 swim in her everyday prosthesis because there are some
24 components that can rust. The foot shell can hold water. So
25 we had discussed providing her with a special prosthetic foot

1 that she can walk around a pool in and then once she's in the
2 pool, she can lock that foot in a position for swimming. You
3 put a flipper on here. So that's something that we did
4 discuss specifically and we're looking to at some point
5 provide one of these for her.

6 Q Okay.

7 A So that's just one example. Another would be a foot that
8 looks a lot different than the one I just showed you. This
9 is a microprocessor-controlled foot. So when the amputee
10 walks on this, there are sensors in here that are reading
11 loading information, angular information, and adjusting
12 instantaneously to that data to give them the most efficient
13 walk. So I have two examples of microprocessor feet, and
14 these are really helpful for folks that want to do outdoor
15 activities, where they're going to be encountering
16 unpredictable surfaces or terrain. This foot will adjust to
17 that for them.

18 Q So if she wanted to return to hiking and -- this would be the
19 foot she would eventually need?

20 A Absolutely. And another one I have here, which is also a
21 microprocessor-controlled foot, is really a revolutionary
22 foot in my experience, in that it has power propulsion. So
23 as the person walks, when they get onto the toe, this foot
24 has a little motor in the back of it that will literally push
25 them onto their other foot, just like we walk.

1 Q Okay. And again, those are more sophisticated than she has
2 now?

3 A They are. There's -- yeah. Those require programming, they
4 require charging every night, carrying a battery, battery
5 pack.

6 Q So let's -- we've sort of gone through the options. One of
7 the things we haven't talked about is if she has running
8 blades. We see those on television with runners. Is that
9 kind of product available?

10 A It is, and I brought an example of that. There are lots of
11 different running legs now, running feet. Again, far more
12 than when I came around 30 years ago. This is an example of
13 a foot that would be for jogging or court-type sports, but
14 not sprinting. So sometimes you'll see on television, you'll
15 see somebody running with a prosthetic leg that is really
16 just designed for sprinting, and those have no heel at all.
17 So you'll notice when they walk on those, they have to stay
18 on the toe of that prosthesis. They can't shift their weight
19 back or else they'll fall over because there's no heel to
20 support them. This is one that an individual can run or jog
21 on and still walk on effectively.

22 Q Okay. Thank you. So now we've sort of talked about socket,
23 suspension system, the foot. What about the part in the
24 middle? Does that just come with the foot?

25 A No. So the componentry between the foot and the socket,

1 those are manufactured parts that we buy. Most prostheses
2 nowadays are what we call endoskeletal, which means the
3 supporting structure of the prosthesis is on the inside. We
4 could put a foam cover on this if we wanted to make it more
5 cosmetic. But so essentially these are modular. And the
6 reason this kind of technology is used now is because this
7 little clamp here has four screws around it; this one has the
8 same. We use these screws to make angular changes between
9 the socket and the foot, or linear changes. So the alignment
10 of this foot, where this foot is placed in space under this
11 socket, is really critical in terms of how the patient
12 functions on it.

13 Q And that's the art of what you do, so to speak?

14 A It is. Yeah. It's not rocket science, but that's -- yeah.
15 That's my expertise. So the manufacturers of these feet have
16 specifics on where the body's weight line, which is just a
17 plumb line through the body's center of gravity down through
18 this foot -- they tell us where that weight line should fall
19 in this plane and also in this plane, and that's where we put
20 it as a starting point, but then we walk the patient in a
21 test socket and make adjustments.

22 It's nice to have these kinds of components,
23 though, long term because we know an individual's not going
24 to walk the same three months out on a prosthesis that they
25 did on Day 1. They're going to walk differently six months

1 out. So as they learn how to walk and walk more robustly and
2 confidently, better balance, and get a stronger weight shift
3 onto the prosthesis, we have to change the alignment, we have
4 to adjust the alignment, and these components give us the
5 ability to do that.

6 Q All right. So I think we've talked about all the mechanical
7 features. You mentioned cosmetics.

8 A Yeah.

9 Q Now have you talked about cosmetics with Lidy?

10 A We have. And that is something that is very personal for
11 some folks. It's really important to have this prosthesis
12 look like a real leg. So we certainly have -- we offer the
13 option of once we get our alignment set and we're happy with
14 the fit and function of the prosthesis, we can put a foam
15 material over this hardware and shape it like a leg, and then
16 typically we can go with a cosmetic skin over that.

17 Q Did you bring an example of that?

18 A I did. I didn't bring an example of the foam cover.

19 Q Okay.

20 A But once -- we would take measurements of her sound-side leg
21 or her intact leg and take a tracing. So once we lay up the
22 foam on here, we sculpt it to match the other leg as best we
23 can. And then there would be this silicone or PVC, lots of
24 different materials, outer cover that would go over that and
25 would glue to the top so you have a nice cosmetic finish.

1 Q This one in your hand, who was that made for?

2 A This is for Lidy, yeah. But, you know, she faced a dilemma
3 or reality of having to make a choice on whether to put this
4 on. At one point, this was important to her and we had it
5 covered. But then she realized it's minimal but it's added
6 weight, and she's very sensitive to the weight of the
7 prosthesis. So she's elected for now to wear her prosthesis
8 without a covering skin. But --

9 Q If she had a complete other leg with the covering skin on it,
10 that would be an option?

11 A That would be.

12 Q All right. But right now, how many prostheses does she have?

13 A She just has one that she uses functionally.

14 Q What if that one breaks?

15 A If that one breaks, she's going to get ahold of me and we'll
16 try to get her in and see what we can do. You know, it
17 depends on what breaks. If the foot breaks, we can call the
18 manufacturer and get a loaner or something in a day or two.

19 Q In a day or two. But right now, if the prosthesis she has
20 fails, until she gets with you and the manufacturer and all
21 that, she's without a foot to stand on, so to speak?

22 A Yeah. And that's a reality too. When we put her cover on,
23 when we do that foam cover, it takes me a day to do that. So
24 that's a situation where you got to drop off your prosthesis
25 to me in the morning and I'll get it back to you by the end

1 of the day. So you got to make other arrangements to get
2 around that day.

3 Q All right. So I think we finished the leg. We've gone from
4 top to bottom, inside to out.

5 A Okay.

6 Q I want to talk to you now about the reality of care of having
7 a residual stump and having to do the socks and liners. And
8 you said movement can create problems. What do you teach --
9 what did you teach Lidy and what do you teach amputees with
10 respect to the daily care necessary to stay at the highest
11 function with their prosthetic?

12 A Well, we emphasize proper donning or application of the
13 liner. That's -- seems simple, but putting the liner on
14 correctly is important for skin health. We emphasize
15 hygiene. It's important to keep those liners clean and keep
16 the skin clean.

17 Q You have to clean the liners daily?

18 A Daily. Yeah. And those have to be hand-washed. So we
19 typically supply two, so they will cycle those, wear one
20 today, wash it, let it air dry tonight, put the other one on
21 the next day. In addition to daily washing, it's recommended
22 that they wipe those with rubbing alcohol once a week or
23 periodically just to disinfect them. The socks that she
24 would use over that liner, those have to be washed and dried.
25 They can be machine washed and dried. So yeah, we just

1 emphasize proper donning and good hygiene of the skin and the
2 liner and the sleeve.

3 Q Mr. King, with respect to your work with Lidy Anderson, have
4 there been -- can you describe it to us? Have there been --
5 has it been easy? Hard? How's she doing?

6 A It's been hard.

7 Q What do you mean?

8 A When she first came to me, she and Jeff -- I recall Jeff
9 saying, "We're interviewing you. We're looking for better
10 care." So I knew they were frustrated with where she was at
11 at that point. So I told them in my experience, someone with
12 her health profile, her age, that amputation level, I expect
13 her to thrive. That's just the reality. So that was my
14 goal, and I think I probably inspired them a little bit.

15 But as we -- as I took her on as a patient,
16 it's been hard to get her comfortable because of pain issues,
17 ongoing pain issues in the residual limb. So as a
18 prosthetist, I try to -- I try to come up with solutions with
19 what tools I have to help her with that pain, which would be
20 maybe a different type of liner material. One issue she had
21 was just the heat. You know, when you roll one of these
22 liners on the residual limb, there's no air getting to that
23 skin, so they're hot. We switched her to a liner that has a
24 special material that sort of acts like a heat sink, where
25 it's supposed to pull heat away from the residual limb. Just

1 trying to find solutions to help her.

2 But her residual limb had multiple areas of
3 hypersensitivity, just even sensitive to touch. So I pretty
4 quickly knew this is going to be a challenge to get her in a
5 socket that she can bear all of her body weight on every
6 other step when there's this kind of sensitivity just to
7 light touch.

8 Q I think she's going to share with us that it just hurts to
9 use the prosthetic. Despite your training at Northwestern
10 and your years of clinical experience, have you been able to
11 solve this problem?

12 A No, I don't think so. No.

13 Q Well, is there -- I know you're not a physician. I'm not
14 asking for medical opinion. But even if she has surgery,
15 does that always solve problems of these hypersensitive spots
16 in the nerves?

17 A In my experience, not always.

18 Q We talked about the residual limb. She's a woman of short
19 stature. If a surgical procedure reduced the residual limb,
20 even a little bit, how would that affect your ability to fit
21 her with a prosthesis that will give her the best and highest
22 function?

23 A That would be a compromise. And that's a real concern of
24 mine. Her residual limb is shorter than average for the
25 below-the-knee level. Average or really ideal is about

1 6 inches of residual limb, and she's about 4. So I'm already
2 coming into less surface area to load. So it certainly would
3 be a concern of mine if she would elect to have surgery, if
4 there's any more length taken. That would create a challenge
5 for me. If there was any new scar tissue now that I have to
6 work around, that could be a problem too. That would be a
7 concern of mine. So probably wouldn't be so much if she had
8 a 6-inch residual limb. I've just got more area to load.
9 But when she's already got a short residual limb, then
10 surgery's a bigger concern to me.

11 Q What is your hope for the future as the prosthetist for Lidy
12 Anderson? What are you -- what's your best case scenario?

13 A I want her to -- I want her to be whole again. I want her to
14 be able to do literally everything she could do before. And
15 I think that's possible. That's my experience. You know,
16 there are lots of below-the-knee amputees that you won't be
17 able to identify out in public. They walk as well as I do
18 and they can do anything I can do. So a lot of folks at that
19 level, it's hard for me to identify them as handicapped. So
20 I want to get her there. We've talked about that. That's
21 where I want her to be. I want her to thrive.

22 Q We talked about all these various options. If you had
23 unlimited access to options, does that increase the
24 likelihood of that occurring?

25 A I think that's a way that a person gets to where they want to

1 be and I think they have the potential to be. When we can
2 get them back to being able to participate in as many things
3 that they did prior to the amputation, that's restoring life
4 for them.

5 Q Thank you. I just -- I'll finish with this. I guess it's --
6 don't most amputees have a couple of legs or three?

7 A Yes. Yeah.

8 Q She has one, though?

9 A Yeah.

10 Q Okay.

11 A Yeah. By this point, I think she's got some parts, but I
12 don't think she has a leg that, other than the one she has
13 today, that she could use.

14 MR. WARSHAUER: All right. Thank you.

15 THE COURT: Cross?

16 MR. LoCOCO: Thank you, Your Honor.

17 THE COURT: Ladies and gentlemen of the jury,
18 you'll notice that Mr. LoCoco and I have the same tie on. We
19 don't belong to the same club or we're not from the same frat.
20 We just both have exquisite taste in ties.

21 MR. LoCOCO: Pure coincidence too. I'm going to
22 try and guess what he's going to wear tomorrow.

23 CROSS-EXAMINATION

24 BY MR. LoCOCO:

25 Q Mr. King, my name is Frank LoCoco. We haven't met before,

1 have we?

2 A Just briefly in the conference room.

3 Q Outside?

4 A Yeah.

5 Q I represent the defendant in the case. I've got some
6 followup questions for you. Basically picking up where you
7 left off, it is possible for someone with a below-the-knee
8 amputation to, I'll use your word, thrive? You agree?

9 A Yeah. Definitely.

10 Q And would you agree with me that the -- a person's frame of
11 mind has a lot to do with that?

12 A Absolutely.

13 Q So if you have a physician or a psychologist or a
14 psychiatrist encouraging you to do more, to get out, and you
15 try to implement those instructions, that helps?

16 A Yes.

17 Q And you have, I assume, lots of clients who, maybe you could
18 tell that they're wearing a prosthetic limb, but lots of
19 other people couldn't tell?

20 A Yes.

21 Q All right. So this does kind of work backwards through your
22 direct examination. I don't know that lawyers have a lot of
23 skills, but one of the skills they have is to listen to
24 answers. And you were asked at the end and you were asked
25 toward the beginning how many limbs -- how many prosthetic

1 limbs does Mrs. Anderson have. And the note I have is, one
2 that's functional. So you didn't say "one." You said "one
3 that's functional." Do you know how many limbs she has?

4 A Complete limbs, no.

5 Q All right. And actually when you saw her, she had already
6 had a limb; correct?

7 A Yes.

8 Q All right. So you were her second prosthetist?

9 A I'm not sure. At least second, I believe.

10 Q Okay.

11 A Yeah.

12 Q And you've told the jurors that when someone experiences a
13 below-the-knee amputation, that first year especially, it's a
14 lot of changes to the person's anatomy so that they can
15 utilize the prosthetic limb?

16 A That's correct.

17 Q So you use things like -- I didn't hear you testify about
18 this, but I've heard it in the past -- stump shrinkers?

19 A Yeah.

20 Q So in other words, you're trying to harden the stump so that
21 it can actually take the load of that person's body?

22 A Well, it's not necessarily hardening. It's just shaping --

23 Q Right. Okay.

24 A -- to get it to a point -- so typically when someone goes
25 through an amputation, when they come to us, the lower part

1 of the residual limb will actually be larger around than the
2 part, say, just below the knee. So that's not supportive of
3 getting in a socket. You might get in it but you won't get
4 out of it.

5 Q Because it's so swollen?

6 A We're shooting for that to become cylindrical in shape. And
7 the shrinker just speeds up the process of eliminating
8 swelling and just speeds up shaping.

9 Q All right. So how often do you see Mrs. Anderson?

10 A Give me a time --

11 Q Well, let me ask it this way. When's the last time you saw
12 Mrs. Anderson?

13 A The last time I saw her was probably a couple months ago.

14 Q All right. And you don't have a regular appointment, do you?

15 A No.

16 Q She comes in when she thinks she needs to see you or if
17 something breaks?

18 A Yes. Or if we have something new that we're making for her,
19 then she's going to be on a regular schedule to carry out
20 whatever process it is we're working on for her.

21 Q All right. You know she spends a lot of her day not wearing
22 the prosthetic limb?

23 A I do.

24 Q And I assume you've encouraged her to wear it more often, as
25 much as she could tolerate it?

1 A Yeah.

2 Q And you know that a revision to her -- I'm trying to remember
3 the term you used instead of "stump."

4 A Residual limb.

5 Q Yeah. That a revision to her residual limb has been
6 recommended by her physicians?

7 A Yes, I'm aware of that.

8 Q And you know she's chosen so far not to get it done?

9 A Yes.

10 Q And you would agree that if she were to get that done, that
11 would give you a better opportunity or might very well give
12 you a better opportunity to give her a better fit?

13 A I don't know.

14 Q Well, the doctors, based on your experience, wouldn't be
15 recommending it if they didn't think it would help her?

16 A Yes.

17 Q All right.

18 A Yeah.

19 Q And you'd certainly work to give her a better fit if she were
20 to have that surgery?

21 A Yes. If she had that surgery, we would need to get her back
22 in and reassess the limb and see whatever changes in shape
23 there might be. But obviously we'd really be looking forward
24 to be less sensitive and painful.

25 Q And you know that that's one of the reasons the surgery has

1 been recommended, is to deal with the sensitivity and the
2 pain that she has described?

3 A Yes.

4 Q All right. And that of course then helps you have a better
5 frame of mind so that you can become -- you can start
6 thriving?

7 A That would be my expectation. If it's not hurting, I think
8 you're going to do better.

9 Q Right. These limbs that you showed to the jurors, or even
10 the one that Mrs. Anderson is wearing now, have you had
11 people use those and still do manual jobs, like even a
12 forklift operator?

13 A Yes.

14 Q Okay.

15 A Yes.

16 Q And do you ever have really active clients who you kind of
17 have to slow down --

18 A Absolutely.

19 Q "You got to work with me; we're going to get you to where you
20 want to be"?

21 A Absolutely.

22 Q And Mrs. Anderson hasn't been like that, has she?

23 A She has not.

24 Q All right.

25 MR. LoCOCO: Just a moment, Your Honor.

1 BY MR. LoCOCO:

2 Q One last question. The prosthetic limb that Mrs. Anderson is
3 wearing right now, is that the kind of limb you'd wear if you
4 were going to be operating a forklift, or is there a
5 different one that you'd recommend?

6 A I don't know the mechanics of a forklift to really give you a
7 good answer.

8 Q If it was a standup forklift where you're just standing in a
9 compartment?

10 A That would -- yeah, I don't think that would hamper her, what
11 she's wearing.

12 Q Okay. Thank you.

13 MR. LoCOCO: Thank you, Your Honor.

14 REDIRECT EXAMINATION

15 BY MR. WARSHAUER:

16 Q We talked about the revision surgery when I asked you
17 questions. It poses risks, doesn't it?

18 A I assume it does, yeah. I think there's risk with any
19 surgery.

20 Q And in your experience, it hasn't even been successful for
21 all of your patients, has it?

22 A It has not.

23 Q And some have been worse?

24 A That's true.

25 Q She knows what she has?

1 A Yes.

2 Q And through your experience working with amputees, depression
3 is common, isn't it?

4 A Absolutely.

5 Q Depression makes thriving difficult?

6 A It does.

7 MR. WARSHAUER: Thank you.

8 MR. LoCOCO: Nothing further, Your Honor. Thanks
9 for coming in.

10 THE WITNESS: Thank you.

11 THE COURT: Thank you, sir. You may step down.

12 THE WITNESS: Thank you, Judge.

13 THE COURT: Is there any reason to for this
14 witness to stick around to be available?

15 MR. LoCOCO: No.

16 THE COURT: Thank you. You are free to leave.

17 Ladies and gentlemen, it's 10:35. I think that
18 we have some things to do before we present the next witness, so
19 let's take a break. Do I have -- I've got video to review? How
20 long is that going to be?

21 MR. LoCOCO: You guys have that queued up?

22 THE COURT: All right. Let's make it a 15-minute
23 break. We'll come back at ten minutes to 11.

24 (Jury exits at 10:33 a.m.)

25 THE COURT: All right. We're back on the record

1 in Anderson v. Raymond. We're outside the presence of the jury.
2 I have been shown that part of the deposition of Mr. Anderson
3 that includes a cell phone video that he took. And my
4 understanding is that it was -- the foundation for it was that
5 he took the video on his cell phone and that he says that it
6 captures an event that is not unique and captures an event that
7 happens from time to time with regard to his wife and spasms in
8 her leg. Is that fair to say, Counsel?

9 MR. MCCOY: Yes, Your Honor.

10 MR. ABBOTT: Your Honor, just to clarify
11 something really quick. That was exhibit -- you're showing the
12 actual video of the Exhibit 61. That wasn't the video that we
13 just showed, wasn't the video of it being in the deposition.
14 It's just shown -- it's shown on the screen during the
15 deposition, but that video just reviews just the actual exhibit
16 of the video that was shown during the deposition.

17 THE COURT: So are we -- so this is not something
18 that -- how is it going to be offered? We're playing the
19 deposition. Do we stop and say, "All right, ladies and
20 gentlemen, on the screen now is going to be the video that he
21 shot"?

22 MR. MCCOY: I think it's part of Mr. Anderson's
23 deposition that we've already recorded. And, Your Honor, I'm
24 not sure if it was perfectly clear. Mr. Anderson had a
25 discovery deposition taken in this case. And then in

1 anticipation of him being sick, we did a video in anticipation
2 of this so everybody knew that this was going to be it.
3 Mr. LoCoco made his objection before we started and certainly to
4 the video itself. But we preserved any other objections when we
5 play the video as trial evidence. It was -- there was no
6 objection. There was no foundational objection to it. We just
7 preserved the objection to the video itself. So that's the
8 basis that I offered it. I think we did lay a foundation for
9 it.

10 THE COURT: So what was the basis of your
11 objection?

12 MR. LoCOCO: Well, so first of all, it's
13 Rule 403, it's gratuitous. It's highly prejudicial. It's not
14 probative. All of the -- whatever they want to get out of this,
15 they could get from the -- from Mrs. Anderson.

16 Secondly, this is not a typical day-in-the-life
17 video, which is -- and there's case law in this circuit on this
18 issue. We had gotten this video the day before the deposition,
19 and I -- when I made a record, I cited Jimenez v. The United
20 States, 2008 WL 3849915 and Furey, F-u-r-e-y, v. City of
21 Chicago, 2015 WL 13682033.

22 I had one other note, Your Honor. And there's no
23 doctor who has testified or will testify explaining physically
24 what was going on there. So as I said, I just think it's highly
25 prejudicial. Those two cases that we cite, assuming

1 Ms. Heitkamp is right, and she usually is, our cases stand for
2 the proposition that this kind of video is not a typical
3 day-in-the-life video that Courts -- I know you've seen them
4 before. You've admitted them. You've used them. That's not
5 what this is. This is completely gratuitous to show a moment in
6 time over the last four years where Mrs. Anderson was in pain.
7 And I also think the sound is completely inappropriate.

8 MR. McCOY: Your Honor, this is not a
9 day-in-the-life video. A day-in-the-life video is sort of a
10 stage production of what people go through on a typical day.
11 This was actual direct evidence of what she goes through and
12 what she was going through on this day. You know, it may be
13 prejudicial to their case because it shows extreme damage and
14 extreme pain, but that's not unfair prejudice. That's actually
15 what happened.

16 And we can't convey that with our client. She
17 speaks broken English. She is going to do it the best she can,
18 but that is the only way we're going to be able to capture what
19 she went through on that day and what she's gone through again.
20 So we think this is very, very relevant, and it should come into
21 evidence. I don't see any reason why it shouldn't.

22 MR. LoCOCO: Your Honor, just -- this notion that
23 she speaks broken English, when I took her deposition, I asked
24 her about that. I gave her the opportunity to testify through a
25 translator, and she said no. So if we're going to hear that as

1 an excuse for her testimony, then we need to wait and get a
2 Filipino or Tagalog translator in here and let her testify.
3 Otherwise, it should never be used as an excuse for her failure
4 to testify to her condition.

5 MR. McCOY: Well, let me just say this then. I
6 would say her ability to communicate that thing that she's going
7 through in that actual picture, it can't be conveyed any other
8 way. That's the best evidence and we'd ask that that be
9 admitted. It's relevant.

10 THE COURT: All right. Rule 403 says that I may
11 exclude relevant evidence -- I think that it is relevant -- if
12 its probative value is substantially outweighed by a danger, a
13 danger, of one or more of the following: Unfair prejudice,
14 confusing the issues, misleading the jury, would cause undue
15 delay, would be a waste of time, or needlessly presenting
16 cumulative evidence.

17 I'm going to read the cases that you cite. I'll
18 come back and give you my ruling. But I myself don't feel or
19 believe that it's going to confuse any issues, I don't think
20 it's going to mislead the jury, and I don't think that it's
21 unduly prejudiced. So I'll read the case law and see if my
22 superiors on the Seventh Circuit direct me to do otherwise. So
23 I'll be back. And we are -- I'll give you my ruling just before
24 we start back at 10 [sic]. We're off the record.

25 (Recess from 10:43 a.m. to 10:52 a.m.)

1 THE COURT: All right. Let the record reflect
2 that we're back on the record, but we are outside the presence
3 of the jury. I reviewed the case law offered by Defendant with
4 respect to this video of the plaintiff.

5 One of the issues that is part of this case is --
6 and I suspect that the defendant's position is going to be that
7 if the plaintiff is not a malingerer, she's certainly someone
8 that is not taking reasonable steps to try to advance a full --
9 the best recovery she can have from this injury, and also that
10 perhaps that the plaintiff could be doing a lot more with her
11 life, even returning to work as a forklift operator. But she's
12 electing not to follow the advice of doctors, not to take
13 medications that may help her.

14 The video is not particularly long. While the
15 video is powerful, the fact that evidence can make a powerful
16 impact doesn't make it prejudicial or unduly prejudicial. And I
17 don't think the rules contemplate excluding this kind of
18 witness -- I mean, this type of evidence simply because the
19 party might be able to present it in a more anesthetized way or
20 less visually graphic way. I think I have to make the
21 determination that this video would in fact have such an effect
22 on the jury as to confuse them as to the issues or blind them
23 from other facts that are being presented, even if they're
24 uncontroverted facts. It's not my sense that this video is such
25 that the evidence is something the jury must be precluded from

1 seeing. I don't think that the video compromises the
2 defendant's ability to secure a fair trial.

3 So for purposes of 403, I'm not going to exclude
4 the video. I'm not going to exclude it as it not being
5 relevant. It is relevant. We can watch the -- we can watch the
6 deposition of Mr. Anderson, and I don't know if in the
7 deposition the sufficient foundation is laid, although I don't
8 think there's an objection to foundation. It might be that some
9 further foundation would have to be laid for the video, but
10 that's not going to be difficult to do for the plaintiff. So
11 the motion to exclude that video as evidence in this case is
12 denied.

13 MR. LoCOCO: Thank you, Your Honor. Just
14 procedurally, so we know how we did this because of this issue,
15 I put my objection at the front end of the video, so when we get
16 to that, the video itself becomes, because of the technology
17 today, pinned into it. So it just is part of the deposition,
18 so --

19 MR. ABBOTT: It's actually -- the video we have
20 doesn't -- your objection isn't in that video.

21 MR. LoCOCO: Right. So you ruled on it, and it
22 won't -- the jury won't even hear it.

23 THE COURT: All right. Is there anything that
24 you raise in that objection that I haven't addressed?

25 MR. LoCOCO: No, Your Honor.

1 THE COURT: All right. Let's get the jurors
2 back.

3 Madam Court Reporter, do you need a break?

4 THE COURT REPORTER: No thank you.

5 (Discussion off the record.)

6 (Jury enters at 10:57 a.m.)

7 THE COURT: Please be seated. Thank you.

8 We're back on the record. The jury is back in
9 the jury box. Call your next witness.

10 MR. ABBOTT: Plaintiffs present through video
11 Plaintiff Jeff Anderson.

12 THE COURT: All right. Ladies and gentlemen,
13 right now you're going to see the video deposition of
14 Mr. Anderson. The -- I can as the judge allow -- even though
15 you've seen Mr. Anderson here in court from time to time, the
16 plaintiffs have elected to play a video deposition instead of
17 placing him on the stand because presently he is not feeling
18 very well. And I've agreed to allow them to play this video.

19 Mr. LoCoco or somebody for the defendant is at
20 the deposition and is able to cross-examine the -- Mr. Anderson,
21 so I don't believe that there's any prejudice in that regard.
22 And it's just one of those legal issues that we are -- we talk
23 about while outside the presence of the jury. And you are not
24 to read anything more into it than the fact that I determined
25 that because Mr. Anderson's not feeling particularly well today,

1 I was not going to make him take the stand.

2 So with that, please proceed.

3 MR. ABBOTT: Thank you, Your Honor.

4 THE COURT: Why don't we pause until we get --
5 you have the cameras on?

6 THE COURTROOM DEPUTY: Mm-hmm.

7 THE COURT: There you go.

8 (Video deposition of Mr. Anderson played.)

9 THE COURT: Would you hit pause for a second?
10 Has the witness already been sworn?

11 MR. ABBOTT: He's about to be sworn in a second,
12 Your Honor.

13 THE COURT: Okay.

14 (Video deposition of Mr. Anderson played.)

15 THE COURT: Let me stop right here. Take a
16 break. Ladies and gentlemen, I asked Counsel to come over to
17 talk to me to find out how much longer this deposition has to
18 go, and it's about an hour. So I wanted to -- now is a good
19 time to break. I'll give you an hour. We'll come back at
20 1 o'clock. Have your lunch. But I did not want to force
21 anybody to sit through without a break. So we are in recess
22 until 1 o'clock.

23 (Jury exits at 11:56 a.m.)

24 (Recess from 11:56 a.m. to 1:04 p.m.)

25 (Jury enters at 1:04 p.m.)

1 THE COURT: Please be seated.

2 All right. We will resume the playing of the
3 deposition testimony of Mr. Anderson.

4 MR. ABBOTT: Thank you, Your Honor.

5 (Video deposition of Mr. Anderson played.)

6 THE COURT: All right. It is ten after 2.
7 Counsel, why don't you approach. We'll talk about what
8 witnesses we have, so we can figure out what kind of break we
9 need.

10 (Sidebar begins.)

11 MR. WARSHAUER: Our next witness will be
12 Ms. Anderson.

13 THE COURT: Okay.

14 MR. WARSHAUER: That will take -- certainly won't
15 take that long, and then we'll finish with Luke Anderson, and
16 then we'll rest.

17 THE COURT: All right. You got motions you want
18 to present?

19 MR. LoCOCO: Yeah. Well, my guess is that this
20 is going to take us until 4.

21 THE COURT: That's what I would think.

22 MR. LoCOCO: And so we've got a motion ready to
23 upload to PACER. We thought we'd upload it to PACER, give them
24 a copy.

25 THE COURT: I can look at it, read it tonight.

1 Just figure out a time tomorrow morning.

2 MR. LoCOCO: Maybe have the jury come in a little
3 late tomorrow so we can argue.

4 THE COURT: How long do you think it will take to
5 argue?

6 MR. LoCOCO: 30 minutes total.

7 THE COURT: All right. And so how long a break?

8 MR. LoCOCO: I mean, how long is your direct?

9 MR. WARSHAUER: Not long. We got the vast -- a
10 huge amount of stuff taken care of. I don't have to go through
11 the before and after pictures. All that's been done. So, you
12 know, not --

13 THE COURT: However long it takes.

14 MR. WARSHAUER: It shouldn't take long.

15 (Sidebar ends.)

16 THE COURT: All right, folks. Let's take a break
17 until 2:25. We'll come back with the next witness. We are in
18 recess.

19 (Jury exits at 2:11 p.m.)

20 (Recess from 2:11 p.m. to 2:31 p.m.)

21 THE COURT: My understanding is you're going to
22 testify next. You're going to want to try to speak as clearly
23 as you can, because I want to make sure that we get all of your
24 words down properly. Sometimes people get excited, they speak
25 fast. So if we slow down a bit, it might be better.

1 (Jury enters at 2:31 p.m.)

2 THE COURT: Everyone can be seated. All right.
3 We are back on the record in Raymond -- I'm sorry -- Anderson v.
4 Raymond. Call your next witness, please.

5 MR. WARSHAUER: Thank you, Your Honor. At this
6 time, the plaintiff calls the plaintiff, Adelaida Anderson.
7 Ms. Anderson?

8 THE COURT: Thank you.

9 (Witness sworn.)

10 THE COURTROOM DEPUTY: Please state your full
11 name and spell your last name.

12 THE WITNESS: Adelaida Anderson, A-d-i-l-e-i-d-a.

13 THE COURTROOM DEPUTY: Thank you.

14 THE COURT: All right. Ma'am, I notice you're
15 somewhat soft-spoken, so try to pull that microphone a little
16 closer to you so we make sure that you can be heard throughout
17 the courtroom. And you'll want to try to speak in a tone of
18 voice where you think that you can be heard in the back of the
19 courtroom. All right? Thank you.

20 DIRECT EXAMINATION

21 BY MR. WARSHAUER:

22 Q What do people call you?

23 A Lidy, L-i-d-y.

24 Q I'll call you Lidy and Mrs. Anderson?

25 A Yeah.

1 Q Where do you live?

2 A I live in Effingham, Illinois.

3 Q Who do you live with?

4 A My husband Jeffrey L. Anderson.

5 Q Anybody else live there?

6 A My son.

7 Q And what is his name?

8 A Luke Anderson.

9 Q Where were you born?

10 A I born in Philippines.

11 Q And what is your birthday?

12 A May 11, 1967.

13 Q You've been in the courtroom now for four days. Has that --
14 how's that been for you?

15 A No good.

16 Q Why not?

17 A Because I'm tired, my lower back hurts, and I can't sleep in
18 the night.

19 Q Well, sometimes I see you in your wheelchair and sometimes in
20 the chair. Why do you switch?

21 A To move around.

22 Q We saw you walk up. Have there been times when you've been
23 able to use your prosthetic better than you're using it now?

24 A I use once a while, like sometime an hour, sometime -- I
25 never use all the time because it hurts my stump. It hurts

1 to walk, and I'm out of balance when I walk. I feel like I
2 will fall down.

3 Q We'll talk about that a little more in a moment. I want to
4 find out about you.

5 A Me?

6 Q About you. So where'd -- you told us you were born in the
7 Philippines. Where did you grow up?

8 A I grew up in the Philippines. I move in the US 1994.

9 Q Well, what kind of upbringing did you --

10 A My first husband.

11 Q No. When you lived in the Philippines, what was your family?

12 A My family have a big farm.

13 Q And what did you --

14 A A rice paddy.

15 Q How far did you go in school?

16 A Tenth grade.

17 Q Is that the end of schooling there?

18 A That's the end of the school in Philippines and you graduate
19 then high school. That's before 1985.

20 Q When did you enter the workforce?

21 A I work in US '94.

22 Q When did you start working --

23 A 2007.

24 Q Okay. Lidy, let's -- let me finish. When did you start
25 working as a person? When was your first job?

1 A My first job in the Philippines is factory sardines and I
2 work in high school.

3 Q Still in high school?

4 A Yeah.

5 Q And what did you do in the sardine factory?

6 A I'm a picker.

7 Q What does a picker do?

8 A Put in the box and put in the pallet jack.

9 Q What was your next job?

10 A My next job is a maid. I work with my first husband.

11 Q And what was his name?

12 A Andrew Tiemann.

13 Q And how did you meet Mr. Tiemann?

14 A I work for him. He had a business in the Philippines and I
15 work with him.

16 Q And did you marry him? Obviously you've --

17 A Yeah, I married him.

18 Q Where did you get married?

19 A 1993.

20 Q Where?

21 A In the Philippines.

22 Q And you've told us you moved to the United States in 19 --

23 A '94, yeah.

24 Q Were you with Mr. Tiemann at that time?

25 A Yeah. He stay in the Philippines that time because he had a

1 business there.

2 Q When you moved to the United States, did he come with you?

3 A No. He go home first because I have to do my paperwork to
4 come over to the US.

5 Q Okay. And did you eventually live with him here?

6 A Yes.

7 Q Okay. And what happened to that marriage?

8 A He had heart attack. He pass away.

9 Q When -- about when was that?

10 A '96.

11 Q So when you had arrived in 1994, until Mr. Tiemann's death,
12 did you work?

13 A Yeah. I work in the nursing home and I work in the Fedders
14 air conditioner for job.

15 Q So after Mr. Tiemann died, did you stay working somewhere?

16 A Yeah, I still stay there.

17 Q All right. What was your next job after that?

18 A I work in Krispy Kreme.

19 Q At some point during this time in the '90s, did you have the
20 opportunity to become a United States citizen?

21 A Yes.

22 Q And how do you feel about that?

23 A It's good. I like it.

24 Q So you said you worked at the Krispy Kreme?

25 A Mm-hmm.

1 Q What was your job at the Krispy Kreme?

2 A I drive a forklift.

3 Q What kind of forklift?

4 A It's Toyota.

5 Q And how did you -- what kind of forklift was it?

6 A Standup.

7 Q Was it also -- was it like the one you drove at FedEx?

8 A The same like it. It's different model.

9 Q Sideways, though?

10 A Sideway.

11 Q So now we've got you into about 1996. You're a US citizen.

12 And when did you start working at the Krispy Kreme?

13 A '95. I start 2003. Closed down in '95. They closed down.

14 Q Okay. You started in 1995 and they closed down in about
15 2003?

16 A No, it start 2003.

17 Q Okay.

18 A I have to think. 2003, and they closed down in 2005.

19 Q Okay.

20 A That's what I remember.

21 Q What kind of things did you like to do? What were the
22 activities that you enjoyed while you were working at the
23 Krispy Kreme and at the air-condition factory and things like
24 that?

25 A I used to -- I go bowling, I go fishing, and I ride a bike,

1 and I go to gym after work.

2 Q Did you have family in the Effingham area?

3 A I have my sister live here before, and she move to Vegas, and
4 she graduated with her nursing degree.

5 Q We might need to do that one again. Your sister lives where?

6 A She live in Las Vegas.

7 Q Las Vegas?

8 A Yeah.

9 Q Do you have any family in the Effingham area?

10 A Yeah, I have my nieces.

11 Q Are you close to them?

12 A Mm-hmm.

13 Q Try to answer yes or no, because the --

14 A Yes.

15 Q Otherwise she has to guess.

16 A Sorry.

17 Q So during this time, did you also enjoy going to church?

18 A Yeah, I go to church every Sunday. And I --

19 Q Have you been doing that since -- how long have you been
20 going --

21 A I've been doing that since I got here.

22 Q And what kind of church do you enjoy going to?

23 A St. Anthony.

24 Q And that's a Catholic church?

25 A Yes.

1 Q We heard from your husband Jeff. Is that your husband?

2 A Yeah.

3 Q And we heard from him a little about how you met. Let us --
4 you tell -- let me hear your version of it.

5 A I have to tell that? I met his mom. His mom, I work with
6 her in the Fedders.

7 Q At the air-condition factory?

8 A Yeah. And he asked me -- he said, "You been widow a year
9 now. I never see you go out a month. You always working. I
10 have a son. Can you meet my son? I will call him." I said,
11 "I don't know. I'm not sure yet." And he keep bugging me
12 and I met him.

13 Q And he told us about your first date at --

14 A IGE.

15 Q At a grocery store?

16 A Yeah.

17 Q That's very romantic?

18 A Yep.

19 Q So eventually you got married?

20 A Yeah. We live -- first time we live together for about three
21 years, and after that, we get married.

22 Q And you have a child Luke?

23 A Yeah, Luke. Just one.

24 Q And Mr. Anderson, as we saw in the photographs that we saw on
25 the TV a little while ago, has two children already?

1 A Yeah, he have one boy and one girl.

2 Q And do you get along with them?

3 A Yep. We go together shopping and go everywhere, go swimming
4 and go fishing. We go everywhere, and we going the mall.

5 And everybody, I said, his friend, his classmates, he said,

6 "Who's that with you? I like to go out with her." And he

7 said, "No, that's my stepmom."

8 Q So did you enjoy dressing up?

9 A Yeah. I used to. Not no more.

10 Q Well, there was a woman from the Philippines who was famous
11 for having a gazillion pair of high heels, Imelda Marcos.

12 Did you like having high heels?

13 A I got rid of high heel.

14 Q You did?

15 A After my accident, I already gave away because I cannot wear
16 it anymore.

17 Q But before, you enjoyed that?

18 A Yep. I go to church with high heel and I go party. That's
19 why I have 40 of them, high heel.

20 Q 40?

21 A Yep.

22 Q So we heard a good bit from Jeff Anderson about your life,
23 horses and travel and things, fishing. Did you play golf
24 too?

25 A Yeah, I play with him because he used to -- he play golf a

1 lot and he have a lot of trophy he win.

2 Q Were you a good golfer?

3 A Not really. He beats me.

4 Q How about the horses? We saw several pictures of you on
5 horses.

6 A Yeah, I like ride horses all the time. I love horses to
7 ride. We go to Shawnee.

8 Q One of the things that was talked about was travel?

9 A I like travel all the time.

10 Q Back in the before time, what kinds of trips were you able to
11 take?

12 A I go my sister, we going Arizona, we travel everywhere, to go
13 have -- just have fun, you know.

14 Q There was also some discussion that you traveled back to the
15 Philippines for your mother's death?

16 A Yeah. My mother pass away in 2019.

17 Q Were you able to make that trip alone?

18 A I think a year ago. No, somebody with me to help me.

19 Q Who was that?

20 A My friend. And somebody help me in the airport too. I hired
21 somebody.

22 Q We've talked a little bit about your house. What room do you
23 sleep in?

24 A I live downstairs because I have hard time to go upstairs.

25 Q What room does your husband sleep in?

1 A Upstair.

2 Q When was the last time that the two of you shared a room
3 together?

4 A Last time is in -- I think before my accident. I think
5 July 2017.

6 Q Lidy, did you and Mr. Anderson enjoy an intimate relationship
7 before your injury?

8 A Yes. We're happy.

9 Q Since your injury, have you had a change in the intimacy and
10 the romance and the physical relationship that you enjoyed
11 with your husband?

12 A Yeah. It change a lot.

13 Q Do you miss it?

14 A Yeah.

15 Q Does your husband?

16 Now Mr. Anderson worked for the equity in
17 February?

18 A Yeah.

19 Q Has he changed jobs since then?

20 A Yeah, he changed job. He was elected in Effingham for road
21 commissioner.

22 Q So he's now the road commissioner for Effingham County?

23 A Yeah.

24 Q Or the city of Effingham?

25 A City of Effingham.

1 Q Mr. Anderson shared with us his concerns back in
2 February about his Stage IV cancer, and at that time, it was
3 in remission, if you will. Where are we now?

4 A Yes. He had cancer, and now got back again. Don't know
5 when -- I don't -- he's not getting --

6 Q Just take a breath. Move back for a second. We're okay.

7 A It was okay. Now it's back again.

8 Q So because we didn't have him testify, I'm going to ask you,
9 when we look at Mr. Anderson's face -- he had pointed to
10 something on his jaw during the deposition and was happy it
11 had gone away. When we look at him now, there's something
12 there. Is that --

13 A It's back again. He have a bunch in his back and in his head
14 again.

15 Q Do you want to be taking care of him?

16 A I want to. I can't. It's hard for me.

17 Q Does -- are you concerned that as this gets worse and he
18 needs you, that you won't be able to give him the help that
19 you want to give him as his wife?

20 A Yeah. Last time when he was sick and he have only three
21 months to live, he need me and I can't help him. My son help
22 him. It changes everything in his back, because he had a
23 surgery in his back.

24 Q Ms. Anderson, let's focus on your work at the FedEx warehouse
25 in Effingham. Okay?

1 A Okay.

2 Q When'd you go to work there?

3 A 2007.

4 Q And what had been your job before that?

5 A Krispy Kreme.

6 Q So you went from the Krispy Kreme to --

7 A To FedEx.

8 Q FedEx. What were your jobs at FedEx when you first got
9 there?

10 A First got there, I'm a picker.

11 Q What's a picker do?

12 A Pick some product, the order, and you had to go in the lead
13 to get order for picking the pick face [phonetic].

14 Q And over time did that job change?

15 A Yeah. About a year, they have posted in the board, you
16 have -- to do the forklift job.

17 Q Did you apply for that?

18 A Yeah, and I took it.

19 Q And what kind of forklift was the first one you drove at --

20 A A sitdown.

21 Q And how long did you drive the sitdown?

22 A About three years.

23 Q Did you eventually change from the sitdown to the standup?

24 A Yeah. The sitdown to standup because they bring the forklift
25 from Raymond in the FedEx. They changed to standup.

1 Q Was sort of the basic operation of that what you had been
2 used to at Krispy Kreme?

3 A Yeah.

4 Q So did you -- how did you get to do that job? How did you
5 get to go from the sitdown to the standup?

6 A Because the sitdown job, the forklift, they take away, and
7 they put a new standup forklift. They change it.

8 Q Were you trained on how to use the standup?

9 A Yes.

10 Q Had you been trained at Krispy Kreme?

11 A Yes.

12 Q Did you -- how did you feel about your skills as a standup
13 forklift operator?

14 A I'm a good safety. I'm very careful.

15 Q We heard from Ms. Boone. A word that I just threw out: "Mad
16 skills." Are you really good at it? "Better than average"
17 is what she described?

18 A Yep.

19 Q How would you say you were compared to your other workers?

20 A Everybody say me in work, I'm a good worker, I'm a good
21 driver.

22 Q So I want to show you some things, but first, tell us --
23 well, let's start this way. This is the owner's manual. Had
24 you been trained to do the things in the owner's manual?

25 A Yeah.

1 Q How were you trained to stand in the forklift?

2 A You stand in the forklift. You had to go inside and you have
3 that -- well, you have wheel in here and you have both side.
4 You had to hold this one, you go -- you go this go, and this
5 one is a -- you can brake. You brake. And you go, you go
6 there, and you go there. It feel -- take up your hands, it's
7 sat up and the pedal in the one in the bottom, you had to
8 shut it up and you don't have to step on it.

9 Q So what you've shown us is, your right hand --

10 A The right hand is the one you turn, turn left and right.
11 Wherever you want to go, right here.

12 Q That's your left hand.

13 A Yeah. This left. This is a right. Sorry. I confuse.

14 Q So the left hand is the steering?

15 A This is the steering. This is the go and stop and you go
16 there, you stop, you -- this is the one you go and come back
17 and go.

18 Q That's in your right hand?

19 A Yeah. In the right hands. This one, the left hand, is the
20 one you steering wherever you want to go toward.

21 Q Did you understand from your training about staying inside
22 the forklift?

23 A Yeah.

24 Q What were you taught about staying inside?

25 A Stay inside. Don't out in the forklift. Inside in the

1 compart.

2 Q Did you ever, ever, either Krispy Kreme or at your time at
3 FedEx, intentionally get off a moving forklift?

4 A No.

5 Q Did you ever see anybody who wasn't riding completely in or
6 got off moving forklifts?

7 A No.

8 Q If you had seen somebody do that, what would you have done?

9 A I'm going to tell him don't do that because it's dangerous.

10 Q Did you see warnings on the forklift encouraging you to keep
11 all parts of your body inside the forklift?

12 A Yeah.

13 Q Why was that important?

14 A That's important to people, when you work the forklift, for
15 safety.

16 Q I'm going to show you -- what I just showed you was
17 Exhibit 500 and I'm going to show you something from
18 Exhibit 563, which is a movie called "Safety on the Move."

19 (Video played.)

20 BY MR. WARSHAUER:

21 Q Both feet should be on the floor?

22 A Yep.

23 Q Were you told -- what were you told about that being an
24 important position to have?

25 A For safety.

1 Q Was that the operator normal operating position?

2 A Yeah.

3 Q Both feet on the floor?

4 A Yeah.

5 (Video played.)

6 BY MR. WARSHAUER:

7 Q What were your understandings about that last phrase, the
8 need to stay inside the compartment? Did you understand that
9 you needed to stay inside the compartment?

10 A Yeah.

11 Q Any question in your mind about that? Did you ever think
12 that it was a good idea to not be in the compartment?

13 A You have to be inside all the time the compartment.

14 (Video played.)

15 BY MR. WARSHAUER:

16 Q What was the way that you normally rode the truck around the
17 warehouse in Effingham, forks behind you or forks ahead of
18 you?

19 A Forks behind me.

20 Q Was that the normal way that --

21 A That's the way always I drive.

22 Q I'm going to show you -- does this look like the floor of
23 a --

24 A Yeah.

25 Q -- forklift that you used at Effingham?

1 A Yeah.

2 Q It's Exhibit 157. When you stood in this forklift, there's a
3 pedal. What foot was on that pedal?

4 A The right foot.

5 Q When you stood in this forklift, where was your left foot?

6 A In that inside, yeah.

7 Q Once you were moving, did you ever look at your feet to see
8 what they were doing?

9 A No.

10 Q You didn't just drive around like this to see --

11 A No. No.

12 Q Okay. I'm going to give you several ways to get out. Don't
13 tell me anything until I do it. Okay?

14 A Okay.

15 MR. LoCOCO: Your Honor, object to this. It's
16 leading.

17 BY MR. WARSHAUER:

18 Q How do you get out of the forklift? Well, first, how do you
19 get in?

20 A You get in straight. Straight.

21 Q Like this?

22 A Like that. Yeah.

23 Q And like this. How do you get out?

24 A You go back and go straight. Like that.

25 Q Okay. Did you ever get out like this?

1 A No.

2 Q Why not?

3 A How do you get out like that? I never do that.

4 Q Did you ever get out like this?

5 A No. I get out straight like that.

6 Q Every time?

7 A Yeah. All the time. You have to get out like that.

8 Q Okay. You mean you never got out like this?

9 A No. Never in my life.

10 Q Okay. The record needs to just reflect that you described a
11 scenario where when you exited the forklift, your back was to
12 the forks, and typically your left foot would lead out to
13 step down parallel to the forks; is that correct?

14 A Yeah.

15 Q Okay. Were you good at your job at FedEx?

16 A What you say? I didn't hear you.

17 Q Were you good at your job?

18 A Yeah, I'm good there. I'm perfect attendance ten years.

19 THE COURT: Perfect attendance?

20 THE WITNESS: Yeah.

21 BY MR. WARSHAUER:

22 Q Perfect attendance for ten years? Really?

23 A Yeah. Ten years. Go check my record.

24 Q Okay. Did you enjoy your work at FedEx?

25 A Yeah, I love my job.

1 Q Were you given commendations at FedEx?

2 A What you say?

3 Q Awards and letters --

4 A Yeah, I got bunch awards. I got bunch of award.

5 Q Did that give you pleasure and pride --

6 A Yeah, yep.

7 Q Why?

8 A Because I have -- I have my perfect attendance. They give me
9 a bonus. And I have contest and award, I have money. And I
10 have -- and I work -- they have a quota, you know, like you
11 work a day for 12 hours, and you make your -- it's like a --
12 I can't explain it. It's hard to explain.

13 Q So you say a quota. They expected a minimum number of --

14 A Yeah, minimum number.

15 Q Of liftup, carry, and putdowns?

16 A No, it's not like that.

17 Q Okay.

18 A Like you pick -- like you pick 7,000 a day. And the quota
19 only 3,000, I pick 7,000. That's what that mean, all day. I
20 pick 7,000 a day, sometimes 6,000 a day, when I was a picker.

21 Q How about on a standup forklift? Were you also good at that?

22 A I load the truck and I loaded truck. I can load eight truck
23 a day, sometime seven truck.

24 Q How did that compare to other people?

25 A Sometime people they have five or six. It depends what kind.

1 Sometime it's hard.

2 Q Were you awarded commendations and recognition for safety?

3 A I always careful.

4 Q You told me about a poster?

5 A Yeah. I have award poster for safety. They give me award
6 because I'm a good safety. In ten years, I never have
7 accident.

8 Q Your picture was on the wall?

9 A A picture on the wall. Picture in the break room.

10 Q Safety person?

11 A Yep.

12 Q Did that give you pleasure? Were you proud of that?

13 A Yeah. I think I give to you. I think I give to you.

14 Q You gave me a lot of things, but we got them a little late to
15 be sharing them today. But I -- you told us a few minutes
16 ago you started work when you were 16?

17 A Yeah, in the Philippines.

18 Q Until this accident, until this event on July the 29th of
19 2017, have you ever had a time outside the workforce when you
20 weren't working?

21 A No.

22 Q If you were physically and emotionally able to work now,
23 would you do it?

24 A Yeah.

25 Q Do you miss work?

1 A I miss working.

2 Q We heard from Dr. Tabak yesterday about your wages, that
3 that -- how much money you made. Did that seem accurate to
4 you?

5 A I make --

6 Q Did you earn a lot of money?

7 A Yeah, I make 60,000 a year I work in FedEx.

8 Q That's a lot of overtime at \$15 an hour?

9 A Yeah. 15.50. It have bonus. If you work Sunday, you have
10 bonus. \$300 bonus.

11 Q How did you work on Sundays and still get to St. Ann's?

12 A I go to St. Anthony the night church, 5 o'clock. I work 7 to
13 3. And I get off, I get shower. I go to church, me and my
14 son.

15 Q I want to focus with you on July the 29th of 2017. What were
16 your hours that day? What time were you to go to work and
17 what time did you expect to get off?

18 A That Saturday is 7 o'clock. I work 7 o'clock in the morning.

19 Q Until when?

20 A 3.

21 Q When you would get to work, to start your day, were you going
22 to do -- it was going to be forklift work?

23 A No. We had to meeting in the break room. After have
24 meeting, you have to check your fork truck.

25 Q What did you do to check your fork truck?

1 A You check your fork truck okay or not, check the hose and
2 battery and the horn.

3 Q Did you do that?

4 A Yeah, every day.

5 Q Was your forklift working fine that day?

6 A It's fine.

7 Q And what kinds of -- who was your immediate person that gave
8 you orders? Your boss, your team leader.

9 A That day?

10 Q Yes.

11 A It's Rachel Boone.

12 Q We met Rachel Boone on Monday -- I'm sorry -- Tuesday
13 morning. Had you had any interactions with her before the
14 forklift caused your injury?

15 A No, when -- when I have my accident.

16 Q Had she given you a task or job to do?

17 A Yeah.

18 Q What did she tell you to do, do you recall?

19 A I was -- the first job, I was doing put-away. And they call
20 me into ride room [phonetic]. They said, "Lidy, you need to
21 come into shipping," and I go drive there to shipping. And
22 she give me the paper, the list, to find some product.

23 Q All right. So after you met with her, where were you heading
24 before you did that job?

25 A She give me the paper and I told them I think I have to go in

1 the battery area to change my forklift because I have only
2 one line. And I drive all the way there. Then I hit the
3 crack and my forklift go shaking, and I lose my balance. And
4 next thing I know I was on the floor. That's can remember.

5 Q Ms. Boone said you told her you slipped and it wouldn't stop?

6 A It slipped. It's the same thing. You lose balance. That's
7 the one to mean -- for me, that's what that mean. "Slip" and
8 "losing balance" is same thing.

9 Q While you were driving, were you looking at your feet?

10 A No.

11 Q Have you ever hit cracks before?

12 A Yes.

13 Q Had you had shaking?

14 A Yeah.

15 Q Did you look at your feet that time?

16 A No.

17 Q Immediately before the fall -- I'm going to show you
18 Plaintiff's Exhibit Number 6. Where were your hands as you
19 were driving down the aisle?

20 A My hands, one here and one here.

21 Q So --

22 A The one turning the left hands.

23 Q Did you have your right hand where I put a red circle around
24 the multifunction?

25 A Yeah.

1 Q Did you have your left hand here?

2 A Yeah.

3 Q Do you recall the path that you chose to take?

4 A Straight.

5 Q Do you remember going with -- remember the man who was here
6 the other day, Dr. Meyer? Do you remember meeting him at the
7 warehouse? He testified yesterday morning and the day
8 before. John Meyer? Let me -- do you remember being at the
9 warehouse --

10 (Video played.)

11 THE WITNESS: Yeah, I remember now.

12 BY MR. WARSHAUER:

13 Q Do you remember this?

14 A Yeah.

15 Q Is this -- how does this compare to what you recall, the path
16 you took before you hit the cracks?

17 A That's -- the crack is staying this way.

18 Q But is this --

19 A I went straight. It's straight because that one here, it's
20 straight, you go.

21 Q Okay. Is this the path that you took that you're telling him
22 about at the time?

23 A Yeah, because it was empty. That's why I'm just straight.

24 Q This turn that you just went through, is that challenging?
25 Was that a difficult turn?

1 A No. It was straight.

2 Q Simple turn?

3 A No.

4 Q Is this -- how does this Picture Number 4 -- just looking
5 down an aisle, is this where you were headed?

6 THE COURT: Is there supposed to be a picture --

7 MR. WARSHAUER: Oh, sorry.

8 BY MR. WARSHAUER:

9 Q We're looking down an aisle. Do you recognize this?

10 A Yeah.

11 Q Why did you choose that aisle? First, let me go back.

12 Ms. Boone's told us this is the aisle you were on. Do you
13 agree this is the aisle you were on?

14 A Yeah. This is aisle I want to go because the other aisle you
15 cannot go because it's a picker area. This is the different
16 replen area. This the one you go. So I choose this aisle.
17 And this aisle is straight. You don't have turn.

18 Q Why didn't you want to go down the picker aisle?

19 A Because you cannot go in the picker aisle. You have people
20 pick there. And it's not allowed to go over there.

21 Q If for some reason you had found yourself heading towards the
22 rack, what would you have done?

23 A I didn't remember that, toward the rack.

24 Q Well, listen to me carefully. If your forklift was heading
25 towards the rack and you didn't want to hit the rack, what

1 would you have done?

2 A I hit the brake.

3 Q Okay. What kind of brakes were available?

4 A They have brake right here in the --

5 Q Did you know how to do that?

6 A Yeah, you had to -- you can go that way, you have brake, and
7 pick up the pedal in the bottom. You have to pick up your
8 legs.

9 Q Would you have -- if you were heading towards a rack, why
10 would you choose the brake as opposed to just jumping off?

11 A I never jump off.

12 Q Would you ever jump off a moving --

13 A Never.

14 Q -- forklift?

15 A No.

16 Q Never intentionally do that?

17 A No.

18 Q You told us a moment ago that it shook and you lost your
19 balance?

20 A Yeah, I lose my balance.

21 Q What part of the forklift interacted you -- what hit you?
22 What caused your injury to your foot?

23 A Hit the crack and my forklift, it was shaking.

24 Q But did the forklift run over part of you?

25 A Yeah.

1 Q What part of the forklift ran over you, do you remember?

2 A It was in the middle. I don't know. I was -- I think it was
3 in the middle. Because I was on the ground, and I got lot of
4 blood. And I cannot see. So blurry.

5 Q What do you mean it was blurry? After you were on the
6 ground?

7 A Yeah. After on the ground.

8 Q Your vision got blurry?

9 A I got blurry, and been calling for help.

10 Q Did help eventually arrive?

11 A Yeah. About probably a minute, something like that.

12 Q And do you recall who got there first?

13 A Got there first is Reche1 Boone.

14 Q Do you recall what she did for you?

15 A I don't know. I remember... I hear been yelling to find
16 a -- to tie my leg because it's a lot of blood. That's what
17 I hear. And I hear a lot of people and I see the head. It's
18 so blurry.

19 Q Did you see how much blood you had lost?

20 A It's a lot on the ground.

21 Q Was it just right where you were?

22 A Yeah.

23 Q Do you recall what happened after -- Ms. Boone tells us she
24 put a tourniquet on and then I guess the ambulance people
25 arrived. When's the next thing that you remember?

1 A I don't remember I'm in ambulance.

2 Q Do you remember the helicopter ride?

3 A No.

4 Q Do you remember the first surgery?

5 A No.

6 Q Can you tell us about the discussions before Dr. Low, who we
7 heard from, decided to take your left leg off? Do you recall
8 being part of that discussion?

9 A Yeah. That's the one, the Dr. Low. The first time we go
10 there, Dr. Brown.

11 Q Right. But eventually Dr. Low did the amputation; right?

12 A Yeah.

13 Q Do you recall making that decision?

14 A They told me they're not going to live no more, my leg.

15 Q Was that a hard decision to make?

16 A It's hard. I told them I said, "I want to get -- I don't
17 want to get cut my leg. I want to get -- try something to
18 get -- you know, I don't want to cut my leg." That's what I
19 said. "You need to try something to fix my legs." And they
20 said I could -- you cannot fix it because it's already dead.

21 Q So we learned about your amputation. After that, you stayed
22 in the hospital, I think Mr. Anderson told us, around a
23 couple of months. Do you recall that?

24 A Yeah. Been there I think two months and a half, something
25 like that.

1 Q Then you went home?

2 A I went home.

3 Q And did you eventually start trying to get your life back
4 together with a prosthetic and things like that?

5 A Not for a while. I think my prosthetic a year later.

6 Q Okay. What kind of efforts have you made to learn to use
7 your prosthetic or prosthesis?

8 A What's that?

9 Q What have you tried -- what efforts have you made so that it
10 becomes more comfortable? How have you worked to make this
11 so that you can use it better?

12 A I don't know, because -- and I put my prosthetic leg, it's --
13 and I walk like couple like minute or two minutes. It's --
14 it hurts in the stump, the one in the bottom and the side.
15 It hurts to walk.

16 Q Have you considered getting surgery to make that maybe
17 better?

18 A They asked me to doing another surgery, and I said, I'm going
19 to start the beginning again. I don't want to do that. And
20 I ask I can get medication for that to go away.

21 Q And do you take medication?

22 A I take medication three times a day.

23 Q Has that helped?

24 A It help, the Tylenol and the other one.

25 Q What do you hope will happen so that you can use your

1 prosthetic better?

2 A They said -- they told me need to get surgery and you have
3 get better prosthetic leg and you can walk better. That's
4 what they told me.

5 Q Are you scared of the surgery?

6 A I'm scared surgery again.

7 Q How many have you had?

8 A I have five.

9 Q Do you ever feel like your foot is still there?

10 A Yeah. I feel that twice a week sometime. Like in the night
11 I wake up and it -- my foot is itching. And I look, it's
12 nothing in there.

13 Q Have you ever been in bed and forgotten that you didn't have
14 a leg?

15 A I've done a couple time and I don't have my leg. I just
16 stick out my bed and I got about three minutes. I forgot I
17 don't have my legs. And I fall over --

18 Q And you fall over?

19 A -- many time.

20 Q I think that we've learned from the life care planner and
21 certainly from your husband that you seem to be depressed?

22 A I take medication for depression and I quit on it because I
23 get suicide.

24 Q So when you took the medicines to make the depression go
25 away, it made you want to kill yourself?

1 A Yeah. That's why I quit that medication. I take no more.

2 Q Have you tried talking to psychologists to try to get out of
3 this --

4 A Yeah.

5 Q Is it -- how's the combination of the loss of your leg and
6 your husband's problem, is it -- how can you bear that
7 weight?

8 A It's hard, because he's sick and I cannot help him. My son,
9 he help him a lot.

10 Q I'm looking here, and we see -- what are we seeing here in
11 Exhibit Number 9?

12 A That's my leg.

13 Q And there's a walker. And when we look at page 2 of
14 Number 9, we see -- what are we seeing here?

15 A That's the cover if you put the legs. I have to wash it
16 every day because you not wash it, it smell.

17 Q How many functioning legs do you have?

18 A The two of them, cannot use it because it's so big.

19 Q So you have just one that works?

20 A I have only one, this one. That's it. And I cannot walk
21 very good because I'm go fall down. I cannot get the
22 balance.

23 Q Mr. Anderson told us about the house and Nurse Klosterman had
24 told us about the house too. You and Mr. Anderson bought
25 this house together?

1 A Yeah.

2 Q I'm going to show you Exhibit Number 10. And it has seven
3 pages, so we look at the front page and I just want to call
4 up one thing. Why do you have a sign that says "I'm a
5 Bulldog"?

6 A That's my son. He's a bulldog. St. Anthony basketball.

7 Q Are you proud of that?

8 A Yeah, I always take him there.

9 Q When I was asking you about things that you enjoy doing,
10 how -- what are your thoughts about watching him play
11 basketball?

12 A I like it.

13 Q Does it give --

14 A I'm proud of him.

15 Q So what part of the house are we looking at when we look at
16 this ramp?

17 A I'm looking in the front house.

18 Q Okay. That's page 2. When we move to page 3, what are we
19 seeing here?

20 A That's my bathroom, the one I'm go shower.

21 Q And when we go to Number 3, what is this?

22 A That's a shower.

23 Q Number 4, actually. And is this one also part of the
24 bathroom?

25 A Yeah.

1 Q Number 5? What are we seeing here on Number 6 --

2 A The one going upstairs. We have an Acorn.

3 Q So how often do you -- what is at the top of these stairs?

4 A It's upstairs. You have to use the Acorn to go the second
5 floor.

6 Q And what is this that we see here?

7 A That one, and you have to go in the living room.

8 Q So there's lots of steps in your house?

9 A Yeah. We have a lot of steps and you have basement, and I
10 cannot go anywhere in the basement almost three years. And I
11 go only this year. My son help me. I go on my butt.

12 Q How do you go?

13 A I go sit down on my butt.

14 Q Well, since you've mentioned "butt," I'm going to ask you.
15 Have you gained a little weight since this event?

16 A Yeah, I gain a lot.

17 Q Before this event, about what size were you?

18 A I'm 120. 180, something like that.

19 Q What size clothes did you wear?

20 A Size 3, size 2. It depends what kind of clothes.

21 Q We looked back at this prosthetic on Exhibit 9. Would you
22 like to have a swim prosthetic?

23 A Yeah. I like it because I like swimming a lot.

24 Q Would you like to have a prosthetic to wear your 40 pairs of
25 high heels?

1 A I don't know you can wear prosthetic with high heel. I think
2 you not.

3 Q If such a thing existed, would you like it?

4 A Yeah.

5 Q All right. Would you like one so that you could jog?

6 A Yeah, because I used to jog.

7 Q Where did you jog?

8 A I go to -- I go around in the Park Hill, the village in -- I
9 have a member the gym in there.

10 Q Did you also have a treadmill at the house?

11 A Yeah, I have treadmill in the house.

12 Q Mrs. Anderson, if you were able to work, would you work?

13 A Yeah.

14 Q Could you drive a forklift again?

15 A No. I'm not doing that no more. I'm scared. And I see the
16 forklift, I'm already...

17 Q Before we finish up with a couple of questions, I want to go
18 back to Exhibit 6. Why wouldn't you jump out of that
19 forklift?

20 A What's that?

21 Q You told me that you didn't think jumping out of a forklift
22 is something you would do. Why wouldn't you?

23 A I never jump in the forklift.

24 Q Why not?

25 A That's dangerous.

1 Q Lidy, what's the future hold?

2 A What's that?

3 Q What do you hope will happen in the future for you and your
4 family?

5 A I didn't understand what you say.

6 Q Are you hoping to be more active?

7 A Yeah. And I can walk better.

8 Q Are you hoping to beat this depression?

9 A Yeah. I want to get out the -- I'm so depressed.

10 Q Have you ever -- I know that you said the medication made you
11 want to take your life. But even without the medication,
12 have you ever thought that it was just maybe the best thing?

13 A Sometime I think.

14 Q Are you -- what are your thoughts about how your parenting of
15 Luke has changed?

16 A I see my son every day. And he's not home, I'm so depressed.
17 That's only keep me alive is my son.

18 Q Have you been able to be the parent for him that you were
19 before July the 29th of 2017?

20 A Before, I take care of him a lot. Now he take care of me.
21 He do laundry and go grocery.

22 Q And are you concerned about your ability to take care of
23 Jeff?

24 A Yeah.

25 MR. WARSHAUER: Thank you.

1 THE COURT: You want a break before cross?

2 MR. LoCOCO: Only if you do, Your Honor.

3 THE COURT: Yeah. Let's take a five-minute
4 break.

5 MR. LoCOCO: Okay.

6 THE COURT: We've been going for a while.

7 (Jury exits at 3:28 p.m.)

8 (Recess from 3:28 p.m. to 3:40 p.m.)

9 (Jury enters at 3:40 p.m.).

10 THE COURT: All right. Be seated. We are back
11 on the record.

12 Mr. LoCoco, cross-examination?

13 MR. LoCOCO: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. LoCOCO:

16 Q Good afternoon, Mrs. Anderson.

17 A Good afternoon.

18 Q We met about a year and a half ago over the internet; right?

19 A Yeah.

20 Q And that's when I had a chance to take your deposition under
21 oath to find out what happened. Do you remember that?

22 A Yeah.

23 Q You were sitting in your house; correct?

24 A Yeah.

25 Q Okay. I want to start with something pretty simple, I hope.

1 Mr. Warshauer was asking you questions about how to get out
2 of the compartment and he was using just this floor. I want
3 to pick up with that. So he was standing on the -- on the
4 floor of this compartment or this piece of foam core board
5 that has an image of the floor. You with me so far?

6 A Yeah.

7 Q And he asked you whether -- how you stepped out, and I think
8 what you said, and then he demonstrated, is you stepped out
9 with your left foot, and then your right foot?

10 A Yeah.

11 Q That's not how you would do it, is it?

12 A That's how I do it.

13 Q So wouldn't you first get your foot off the deadman pedal?

14 A You pick up that one.

15 Q This is supposed to be the deadman pedal?

16 A Yeah.

17 Q Okay. So you would take your foot off the deadman pedal?

18 A Mm-hmm.

19 Q Correct?

20 A Yeah.

21 Q And then you'd get out?

22 A You get out.

23 Q But only after your foot's off the pedal; correct?

24 A Mm-hmm.

25 Q You have to answer with words.

1 A Yes.

2 Q Thank you. And that's because the pedal takes power -- once
3 you lift it up, takes the power away from the truck,
4 disconnects the battery; correct?

5 A What you say?

6 Q When you put your foot on the pedal, it connects the battery
7 power to the lift truck?

8 A Yeah.

9 Q And when you take your foot off the pedal, it disconnects the
10 battery?

11 A Yeah.

12 Q And it puts on the brake?

13 A Yeah.

14 Q Okay. And you would not get out of the forklift in normal
15 operation?

16 A Mm-mm.

17 Q Unless your foot was off the pedal; agreed? You agree with
18 that?

19 A I didn't understand what you said.

20 Q Yeah. You wouldn't step out of the compartment unless your
21 right foot was already off of the pedal?

22 A Yeah.

23 Q Okay. And Mr. Warshauer covered a number of things, so I
24 might be popping around a little bit. FedEx Supply Chain,
25 that warehouse in Effingham, we haven't -- I don't think the

1 jury's heard what kind of warehouse it was. It was a food
2 warehouse for a grocery store chain; right?

3 A Yeah.

4 Q For Pinnacle Foods?

5 A Mm-hmm, yeah.

6 Q And that warehouse sometime, what, about a year after your
7 accident, it closed?

8 A I think so. They close down.

9 Q Well, forget about the time. It's closed now; correct?

10 A Yeah.

11 Q Okay. You said that you'd like to get back swimming; is that
12 true?

13 A Yeah, I want to.

14 Q Have you asked Bryan King, Mr. King? You know him; he was
15 here this morning?

16 A Yeah. I ask him one time.

17 Q Did you ask him about getting a swimming prosthetic?

18 A Yep.

19 Q Do you know why he didn't make one for you?

20 A I don't know.

21 Q Okay. So when you started at FedEx Supply Chain, you started
22 as a picker?

23 A Yeah.

24 Q Which means you were filling orders for individual stores;
25 correct?

1 A Correct.

2 Q And then whatever you -- so you'd have -- you'd fill a pallet
3 with boxes; right?

4 A Yes, product.

5 Q And then the forklifts would put them into semitrailers to
6 get delivered to the stores?

7 A Yeah.

8 Q Okay. And then you wanted to take a forklift operating job?

9 A Yeah.

10 Q And that paid more money?

11 A Yeah.

12 Q Because it included more responsibility; correct?

13 A Yeah. And --

14 Q You were going to operate heavy pieces of equipment?

15 A Yes.

16 Q And you knew you needed to be safe?

17 A Yeah.

18 Q And you knew that if you did get out of the forklift while it
19 was still moving, you could be seriously injured; correct?

20 A What you say?

21 Q You knew that if you stepped out of the standup forklift
22 while it was still moving, you could get seriously injured?

23 A Yeah, you get injured if you get out.

24 Q Yeah. If you get out while it's moving?

25 A No, you not get out when you're moving.

1 Q But if someone did do that, you could get seriously hurt?

2 A Yeah.

3 Q Okay. One of the jobs you had as an operator was to make
4 sure you stayed in the compartment while you were operating?

5 A Yes.

6 Q Okay. Now when I took your deposition last year -- this is
7 page 50, line 3. In fact, let me give you a copy of it,
8 Mrs. Anderson.

9 MR. LoCOCO: Your Honor, may I actually go to the
10 page for her?

11 THE COURT: Yeah.

12 BY MR. LoCOCO:

13 Q So I asked you at line 3, "So tell us what happened, where
14 were you going, and then what happened." And you answered:
15 "I was driving in my forklift. I ran over some crack. My
16 forklift was shaking and I lost my balance. The next thing I
17 knew, I was on the ground, and the forklift ran over my leg."
18 You see that?

19 A Yeah.

20 Q And that was your testimony?

21 A Yeah.

22 Q Okay. And then on page 52, which is the top of the next
23 column, line 9 -- tell me when you're there.

24 A Yeah. I'm there.

25 Q I asked, question: "Now when you say you lost your balance,

1 how did you lose your balance?" And you answered: "My
2 forklift was shaking." Correct?

3 A Yes.

4 Q You didn't say "I slipped." Correct?

5 A No.

6 Q All right. You were trained to operate a Toyota standup when
7 you were at Krispy Kreme?

8 A Yes.

9 Q And then you got training again from FedEx?

10 A Yeah.

11 Q One of the things you mentioned with Mr. Warshauer is that at
12 the start of your shift for the forklift operators, you're
13 required to check it out to make sure it's operating
14 properly?

15 A Yeah.

16 Q So I want to talk about that for a minute or so. You check
17 to make sure that the steering works?

18 A Mm-hmm.

19 Q Yes?

20 A Yes.

21 Q You check to make sure that the --

22 A The horn work.

23 Q The horn works. That all of the --

24 A The hose.

25 Q Pardon me?

1 A The hose. The hose.

2 THE COURT: The hose?

3 BY MR. LoCOCO:

4 Q The hose? What hose?

5 A The hose in the truck.

6 MR. WARSHAUER: She's talking about the
7 hydraulics.

8 BY MR. LoCOCO:

9 Q You inspect the hydraulic hose --

10 A Yeah.

11 Q -- to make sure they're not leaking?

12 A Yeah.

13 Q And you check the tire to make sure it's not chunked out --

14 A Yeah.

15 Q -- correct? You check the brakes?

16 A Mm-hmm. Yeah.

17 Q You check both the brake you use with the handle; correct?

18 A Yeah.

19 Q Also the foot brake?

20 A Yeah.

21 Q And on the day of your accident, July 29, 2017, did you do
22 the daily check?

23 A Yes.

24 Q And was it working properly?

25 A It's working.

1 Q No malfunctions that day? It was working the way you
2 expected it to?

3 A Yeah, in the morning.

4 Q Well, up to the time of your accident, did it work fine?

5 A Yeah.

6 Q And if you found something not working properly, what were
7 you supposed to do?

8 A You had to bring to ship.

9 Q To the maintenance?

10 A Yeah, to fix it.

11 Q And you'd stop using it?

12 A Yeah.

13 Q On Saturday, were there maintenance people there?

14 A No, it's not there.

15 Q So if you had a problem on a Saturday, would you just get a
16 different forklift?

17 A Yeah.

18 Q Okay. When you're standing in the compartment -- I'm going
19 to do it this way now. You told Mr. Warshauer -- we talked
20 about your feet and we talked about your hands. I'm not sure
21 we talked about your backside, but you would lean against the
22 back pad; correct?

23 A Mm-hmm. Yeah.

24 Q Yes. Okay. And you had operated that type of forklift for
25 three years before your accident?

1 A Yeah.

2 Q Had no problems in those three years; correct?

3 A Some people do.

4 Q No, but you had no problems operating?

5 A I don't have problem.

6 Q Pardon me?

7 A I don't have problem. The other person next my ship, he had
8 problem.

9 Q I want to talk about you. You never had a problem staying in
10 the compartment; correct?

11 A No.

12 Q Never fell out before?

13 A Never.

14 Q Never lost your balance before?

15 A No.

16 Q And you had been going over the cracks on that floor for
17 three years?

18 A Yeah.

19 Q Okay. Now --

20 MR. LoCOCO: Could I have the document camera?
21 I'm sorry, the computer thing.

22 THE COURTROOM DEPUTY: Oh, mm-hmm.

23 MR. LoCOCO: 503, please. We used to just make
24 big pictures to show. Right, Your Honor?

25 THE COURT: Yep.

1 MR. LoCOCO: Okay.

2 BY MR. LoCOCO:

3 Q So we're looking at 503, first page of 503. Do you see that
4 picture, Mrs. Anderson?

5 A Yeah.

6 Q And I think what you did, you told Mr. Warshauer that that's
7 the aisle that you were going down when your accident
8 happened?

9 A Yeah.

10 Q And that's the F/G Aisle?

11 A Mm-hmm.

12 Q Yes?

13 A Yes.

14 Q So you took a curve so that you would avoid the pick aisle;
15 correct?

16 A Don't have curve.

17 Q Pardon me?

18 A You don't have curve. It straight go shipping.

19 Q I understand that. You drove into this aisle instead of
20 going down the other side of this?

21 A Yeah.

22 Q Because you wanted to stay out of the pick aisle?

23 A Yeah.

24 Q Just before your accident, was there someone there picking?

25 A No. No picker because it's Saturday.

1 Q So no one was in your way?

2 A No.

3 Q But you decided to take this curve and go down F/G?

4 A They don't have curve. It's straight.

5 Q But from where you were coming -- we saw that video of you
6 with Dr. Meyer -- you went straight down, and then turned to
7 the right, and then turned back to go straight into the
8 aisle?

9 A It's not that way. It was straight.

10 MR. LoCOCO: Can I have the next picture? Next
11 one. Keep going. Keep going, please. Let's go back to the
12 first one. Now can I switch to the document camera?

13 BY MR. LoCOCO:

14 Q So you remember this drawing that Dr. Meyer had up?

15 A Yeah.

16 Q All right. And all he was saying is you came into this aisle
17 and then you -- your testimony is you straightened out;
18 correct?

19 A Yeah, straight.

20 MR. LoCOCO: All right. Now if we go back to the
21 computer.

22 BY MR. LoCOCO:

23 Q So when you came down this aisle that we see in 503, you were
24 going straight down the aisle?

25 A Yeah.

1 Q You never turned?

2 A No.

3 Q Always stayed straight?

4 A Yeah.

5 Q And after the accident, the forklift was still straight down
6 the aisle?

7 A Yeah.

8 Q Okay. Few other questions about the accident. You don't
9 remember when you let go of the control handle during this
10 accident; correct? You told us that you lost your balance,
11 that you fell out. You don't remember during the accident
12 process when your hands came off the controls; correct? You
13 have no memory of that?

14 A No.

15 Q You agree with me, you don't remember?

16 A I don't remember because I was on the floor already.

17 Q Right. So you don't remember when your left hand came off
18 the steering tiller; correct?

19 A No. What are you talking about?

20 Q Once you're on the floor, your hands are off the controls?

21 A Yeah. I was holding both my hands, the right and left.

22 Q And at some point, you were on the floor then?

23 A Not on the floor. It was -- I remember my -- I ran some
24 crack and my forklift was shaking, and I know I was on the
25 floor already.

1 Q Right. So the forklift -- you went over a crack, the
2 forklift was shaking, and the next thing you knew, you lost
3 your balance and the next thing you knew, you were on the
4 ground?

5 A Yeah. I lose my balance. Next thing I know, I was on the
6 floor.

7 Q Right. And all I'm asking you is, do you remember when
8 during this process your hands came off the controls?

9 A Cannot remember.

10 Q Okay. And you don't remember when your foot came up off the
11 pedal, do you?

12 A No.

13 Q Okay. Now your accident happened on July 29 of 2017; right?

14 A Yes.

15 Q And we've looked at your medical records and I want to ask
16 you some questions about some entries that are in the medical
17 records.

18 MR. LoCOCO: Now the document camera, please.

19 BY MR. LoCOCO:

20 Q This is Plaintiff's Exhibit 129. It's in evidence. This is
21 page 5,290 of 5,406. So this is a document from
22 St. Anthony's Hospital. You see it's dated July 29, 2017.
23 Do you see that?

24 A Yes.

25 Q And then this highlighted part says, "50-year-old female

1 presenting to the emergency department with left lower
2 extremity degloving injury. Patient was operating a standup
3 forklift when it tipped over for an unknown reason. Upon EMS
4 arrival, patient was laying down approximate 5 feet away from
5 the forklift." You see that?

6 A Yeah. I see that.

7 Q Did you tell the EMS people that the forklift --

8 A No, I never talk nobody.

9 Q I know your answer, but I, for the record, I have to get the
10 question out. Did you tell the EMS people or the doctors at
11 the emergency room that the forklift tipped over?

12 A No, because I'm not wake there.

13 Q Okay. Next one I want to ask you about is this. This is
14 still 129, Exhibit 129, page 351. This is from Carle
15 Hospital. So you went to St. Anthony's Memorial in Effingham
16 first; correct? Or do you remember that?

17 A I don't know. I don't remember I was in St. Anthony.

18 Q Yeah. And I think Mr. Warshauer asked if you remembered the
19 helicopter ride. Do you remember that?

20 A No, I don't remember either.

21 Q You do remember being at Carle?

22 A When I wake up, I remember.

23 Q Okay. So this is a record from Carle. Again, the
24 highlighted part here says, "Ms. Anderson was involved in a
25 forklift accident on Tuesday, 7-29. Today is her 18th day in

1 the hospital. She says she was at work driving the forklift,
2 as she has been doing for ten years at FedEx. She has worked
3 on forklifts overall 13 years or so. Has never had an
4 accident. A good safety record. The truck jerked and threw
5 her off, then ran over her foot." Did you tell the doctors
6 or the nurses at Carle that the truck jerked and threw you
7 off?

8 A No.

9 Q So the accident was September -- or July 29. 18 days later
10 is like August 16th. All right? So that was that record.
11 Next record is from the FedEx file, which is Exhibit 583, but
12 it's Bates Ray_Anderson 135.

13 MR. LoCOCO: I guess Mr. Warshauer wants to ask
14 you a question.

15 (Sidebar begins.)

16 MR. LoCOCO: Want to ask her about this one.
17 It's a document with her signature, her --

18 THE COURT: Work comp form?

19 MR. LoCOCO: Yeah, but I scratched out "work
20 comp."

21 THE COURT: It says, "Work Comp Act,
22 occupation --"

23 MR. LoCOCO: I'll cover it up. All I'm focusing
24 on is "driving forklift, thrown out of forklift." That's all I
25 want to ask her about. She signed it.

1 THE COURT: All right. What's your objection?

2 MR. WARSHAUER: Well, it's really a signature
3 that's really a document completed by her attorney. It's the
4 attorney who chooses the words. We're going to have to explain
5 all of this stuff that Fred chose.

6 THE COURT: Petitioner's attorney.

7 MR. WARSHAUER: We know the petitioners don't do
8 any of this. The lawyers choose the words.

9 MR. LoCOCO: It doesn't matter. She signed it.
10 You can redirect on that.

11 MR. WARSHAUER: Then we got out a whole thing
12 about, who is Mr. Johnson.

13 MR. LoCOCO: This is --

14 THE COURT: All right. Here's my ruling. As was
15 going to be presented to this witness, it showed at the top of
16 the page, "Work Comp Act, occupational disease, fatal case, yes
17 or no." It gives a case number.

18 MR. LoCOCO: Your Honor --

19 THE COURT: It says -- wait. It says "Employee's
20 name, employer's name, average weekly wage."

21 MR. LoCOCO: I think I have a solution, Your
22 Honor.

23 THE COURT: Okay. But let me -- I'm making the
24 record as to why I'm ruling the way I'm ruling, and then I'm
25 going to hear your suggestion and see if it changes my ruling.

1 "What is the nature of the injury?" And then there's a return
2 to work date. It's empty. "Is there a petition for immediate
3 hearing attached? Is the injured employee currently receiving
4 temporary total disability benefits? Yes. If a prior
5 application was ever filed by this employee, give the case
6 number. Attention, Petitioner: This is a legal document. Be
7 sure all blanks are completed correctly and you understand the
8 statements before you sign it. Refer to the commission's
9 handbook on worker's compensation and occupational disease."

10 This document is so loaded with references to
11 work comp. I don't know how it can be presented -- and then at
12 the bottom it shows who her attorney is, and it makes specific
13 reference -- anybody who's had a work comp case themselves, if
14 they're on the jury, are going to know what this is. Any of
15 these people who may have had safety their employment maybe have
16 to fill out some of this stuff. So I think the document as it
17 is, it puts into evidence that there's a work comp claim.

18 Now how do you propose to --

19 MR. LoCOCO: The way I would do it is I would
20 never show the document to the jury.

21 THE COURT: Okay.

22 MR. LoCOCO: I'm going to ask Mrs. Anderson,
23 "Didn't you sign a document in which when you were asked how the
24 accident occurred? You said 'driving forklift, thrown out of
25 forklift.'" If she says "I don't recall that," I will then show

1 her and only her the document to refresh her recollection, and
2 we'll see what she says. That way, the jury doesn't see the
3 document at all, and that's perfectly proper impeachment.

4 MR. WARSHAUER: Or she might well say, "My
5 worker's comp attorney helped me fill that out."

6 MR. LoCOCO: If you prepped her right, she
7 shouldn't have. She shouldn't.

8 MR. WARSHAUER: You really expect her to be
9 sophisticated enough to not do that?

10 THE COURT: She filled that out and her lawyer
11 just said, "Here, I typed this out, and then you sign it and
12 then I'll sign it."

13 MR. LoCOCO: Your Honor, first of all, it's
14 consistent with the last two documents, the last document I
15 showed her.

16 THE COURT: Well, first of all, it's not. The
17 first document you showed her, the next sentence read, "Patient
18 could not give a clear history as to how the accident happened."
19 So the second document was entitled "PSTD [phonetic] Dreams,"
20 and it is not necessarily her writing. It is -- it's just a
21 consult from her -- from a psychiatrist or something, that -- so
22 I think that you can ask, "Do you recall signing a document in
23 which it said that you were driving a forklift and you were
24 thrown out of the forklift?"

25 MR. LoCOCO: Okay.

1 THE COURT: I think you can ask that. And --
2 but --

3 MR. LoCOCO: That's fine. I can live with that.

4 THE COURT: All right.

5 MR. LoCOCO: I'll have to, but I can live with
6 that.

7 THE COURT: You'll have to.

8 MR. LoCOCO: Just from a timing perspective, I'll
9 try to get to a natural break point, which is probably a couple
10 minutes. I don't know. I can't finish her today. I mean, I'd
11 like to, but isn't it after 4?

12 THE COURT: All right. Well, then we're on the
13 subject now of her statements, how the accident happened, what
14 she remembers, what she doesn't remember. What's the next
15 subject --

16 MR. LoCOCO: Damages questions. Damages.

17 THE COURT: So let's finish this up and cut them
18 for the day.

19 (Sidebar ends.)

20 BY MR. LoCOCO:

21 Q Okay. Mrs. Anderson, in September of 2017, not quite two
22 months after the accident, do you recall signing a
23 document -- in which you signed a document that said that the
24 accident occurred as follows, quote, "Driving forklift,
25 thrown out of forklift"?

1 A Sign? I never sign nobody. What's that mean, you say?

2 MR. LoCOCO: May I approach the witness to just
3 ask her to verify the signature, Your Honor?

4 THE COURT: Yeah.

5 All you're asked to do, ma'am, is to verify
6 whether or not that's your signature.

7 BY MR. LoCOCO:

8 Q Is this your signature, Mrs. Anderson?

9 A Never remember sign.

10 Q But is that your signature, ma'am?

11 A It's different sign.

12 Q That's -- is this your signature?

13 A Yeah.

14 Q Okay. You just don't remember signing it; right?

15 A No.

16 Q Okay.

17 MR. LoCOCO: That's a good place, Your Honor.

18 THE COURT: All right. One of the things that we
19 talked about when we met at the other side of my bench -- was
20 that -- do you have another one?

21 MR. LoCOCO: Yeah, I did, I'm sorry.

22 THE COURT: Go ahead.

23 BY MR. LoCOCO:

24 Q Mrs. Anderson, after the accident at some point, you did give
25 an interview to an OSHA investigator; correct?

1 A About six months later.

2 Q Yes. Where you sat with the investigator and he asked you a
3 number of questions; correct?

4 A Yeah. I was in medication and suicidal.

5 Q This is Ray_Anderson 196. Do you recall telling him, "Went
6 down G Aisle and turned right and then left on F/G"? That
7 sound right? You went down the G Aisle, turned right, and
8 then left to go down F/G?

9 A I don't remember to say that.

10 Q Okay. But that's what you did that day; right?

11 A In G, it's straight.

12 Q "Hit a chip chunk of wood, was thrown out"?

13 A I never remember to say that one either.

14 Q You don't remember saying that?

15 A Nope.

16 MR. LoCOCO: All right. Now I'm ready. Thank
17 you.

18 THE COURT: All right. At the last sidebar, one
19 of the things we talked about was the fact that since it's about
20 quarter after 4, and Mr. LoCoco was finishing up with line of
21 questions with respect to her memory about how the accident
22 happened, was going to move on to a different subject. But we
23 thought it would take some time, and so I decided that this
24 would be a good time to break for the day. And we can pick up
25 that line of questioning or continue the cross-examination of

1 the plaintiff tomorrow.

2 I do expect tomorrow morning, we will have
3 lawyer-judge things to take up. So I am going to -- I'm going
4 to say be here by 10. And that way, I'll make sure we've got
5 all that stuff out of the way. I won't have you getting up
6 earlier and sitting around for an hour thinking, "I could be
7 sleeping through this." So if you're here by 10, we should be
8 good to go tomorrow.

9 Thank you, ladies and gentlemen. We are
10 adjourned for the day.

11 (Jury exits at 4:13 p.m.)

12 THE COURT: If we come back tomorrow at 9, that
13 should give us enough time to argue whatever motions and
14 everything we need to take up? Fair to say?

15 MR. LoCOCO: Yes.

16 THE COURT: Okay. Do you agree with that,
17 Mr. Warshauer?

18 MR. WARSHAUER: I don't think there's --

19 THE COURT: Pardon me?

20 MR. WARSHAUER: I can't imagine it taking an
21 hour. If he talks for 55 minutes, it will take an hour, because
22 I'll have five minutes.

23 THE COURT: Well, as I say, I'll err on giving
24 this jury a break. So tomorrow, we have you and -- I mean, we
25 have Plaintiff, we have young Luke.

1 MR. WARSHAUER: That's it.

2 THE COURT: And that's it. Then you close --

3 MR. LoCOCO: And then we put Mr. Rogers on.

4 THE COURT: Then we put Mr. Rogers. Okay. All
5 right.

6 MR. LoCOCO: Thank you, Your Honor.

7 (Recess at 4:14 p.m.)

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10 **COURT REPORTER'S CERTIFICATE**

11 I certify that the foregoing is a correct
12 transcript from the record of proceedings in the above-entitled
13 matter.

14 Dated this 21st day of December, 2021

15 /s/ Hannah Jagler

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17 _____
18 Hannah Jagler, RMR, CRR, FCRR
19 Official Court Reporter
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